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THE INDIAN REGISTRATION ACT

BEING

ACT XVI OF 1908

WITH

EXPLANATORY NOTES AND COMMENTARIES

BY

THE RIGHT HONOURABLE SIR DINSHAH FARDUNJI MULLA, KT., C.I.E., M.A., LL.D.

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THIRD EDITION

BY

EDWARD MILLARD PRATT,

SOMETIME JUDGE OF THE HIGH COURT OF BOMBAY AND JUDICIAL COMMISSIONER OF SIND

Price Rs. 10 (net).

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PREFACE TO THE THIRD EDITION.

The author's commentary on the Transfer of Property Act was published last year and therefore discussions on the law of property on matters not directly within the scope of the Registration Act have been curtailed by references to that work. This applies particularly to the note on part performance. The case of *Ariff v. Jadunath* was decided by the Privy Council after the publication of the last edition and the weighty observations of *Lord Russell of Killowen have been noticed as they* show that the statutory rights arising out of part performance *in India are different from those arising out of the equitable* doctrine in England and do to a certain extent evade the provisions of the Registration Act.

The present edition brings all local rules and amendments up-to-date and includes all cases decided upto January 1935. References have been given throughout to Indian Cases and to the All India Reporter, the mode of citation being the same as in the author's edition of the Code of Civil Procedure.

The editor had the privilege for many years of working in collaboration with the learned author and has utilized notes left by him for the preparation of this edition. He desires gratefully to acknowledge the assistance rendered by Mr K. S. Shavaksha of the Middle Temple, Barrister at Law. The Index of cases has been prepared by Mr B. D. Mehta, Advocate (A. S.), High Court, Bombay.

E. M. P.

January 1935.

PREFACE TO THE SECOND EDITION

Since the publication of the last edition many amendments have been made in the Registration Act by various Acts of the Government of India and by two Bombay Acts

There have been numerous decisions both of the Judicial Committee of the Privy Council and the High Courts on the doctrine of part performance and the rule in *Walsh* v *Lonsdale* (1882) 21 Ch D 9 The law as to part performance is now codified in section 53A of the Transfer of Property Act 1882 and in section 27A of the Specific Relief Act, 1877, both of which are referred to in the amended section 49 of the Registration Act

The distinction between the English law of part performance as laid down in *Maddison* v *Alderson* L R 8 App Cas 467 followed by the Judicial Committee of the Privy Council in *Mahomed Musa* v *Aghore Kumar Ganguly* (1915) 42 I A 1, and the law as contained in section 53A of the Transfer of Property Act and section 27A of the Specific Relief Act is pointed out in this work in the notes under section 49 The effect of section 53A on the rule in *Walsh* v *Lonsdale* is also discussed in the same notes Section 3 of the Transfer of Property Act as now amended makes registration notice in certain cases This is considered in the notes under section 50

References have been given throughout to Indian cases and to All India Reporter, the mode of citation being the same as in my edition of the Code of Civil Procedure

I desire to acknowledge gratefully the assistance rendered by B K Desai, Esquire, Advocate (O S), Bombay, and K S Shavaksha, Esquire, Barrister at Law, Middle Temple

21, MARINE LINES, D F M

BOMBAY, 1st *January* 1931

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* This corresponds with sec 2 of Act 3 of 1877

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* This corresponds with sec 2 of Act 3 of 1877

CORRIGENDA.

Pp 269-271 *For the paragraph headed* "Whether the general provisions of the Limitation Act apply to suits under this section" *substitute* the following —

Limitation —The Registration Act is a special Act dealing with the special subject of registration The special period of thirty days prescribed by this section supersedes any period prescribed by the general law of limitation on the principle *generalia specialibus non derogant* So that the period of limitation for a suit under sec 77 is that prescribed by the section and not that prescribed by the residuary Articl 120 of the Limitation Act But as to the application of this principle to the general sections of the Limitation Act, there was a conflict of decisions Some cases held that the principle did not apply as these sections did not alter the period fixed by the special Act, but only prescribed the manner in which the period should be computed Other cases held that as the Registration Act is a complete code in itself, and as sections 71 to 77 lay down the complete procedure to be fol

the Madras High Court held that he could not (i) Other cases held that though sec 4 was not directly applicable yet the principle embodied in the section and recognized in sec 10 of the General Clauses Act might be

The effect of the amendment is to extend the operation of the Limitation Act (*m*) The period of thirty days takes effect as if it were prescribed in the Schedule to the Limitation Act Sections 4, 9 to 18 and 22 are made applicable so far as they are not expressly excluded, that is excluded by express words referring to the sections (*n*), while the other sections do not apply unless made applicable by the special Act (*o*) It follows therefore that sections 4 and 14 of the Limitation Act apply to suits under sec 77 of the Registration Act On the other hand a person under the disability of minority would not get the benefit of sec 6 of the Limitation Act This was so held by the Madras High Court before the section was amended (*p*).

(*h*) *Nyabitoolla* v *Wazir Ali* (1882) 8 Cal 910, *Malabbar* v *Sasi Bhusan* (1911) 16 Cal W N 20, 12 I C 33 *Suraj* v *Thomas* (1906) 28 All 48, *Nigahya* v *Balu Mal* (1890) P R 74 F B

(*i*) *Appa Rao* v *Krishnamurthi* (1897) 20 Mad 249

(*j*) *Surendra Nath* v *Gopal Chunder* (1908) 12 Cal L J 464 *Abad Baksh* v *Sheikh Babar Ali* (1912) 16 Cal W N 721, 14 I C 173, *Sitarama* v *V Krishna* (1914) 26 Mad L J 307, 23 I C 23

(*k*) *Khettur Mohan* v *Dinabashy* (1884) 10 Cal 265

(*l*) *Abdul Hakim* v *Latifunnessa* (1903) 30 Cal 532 *Khagendra* v *Bamani* (1919) 24 Cal W N 29 54 I C 228, *Kalimullin* v *Sahibuddin* (1919) 47 Cal 300, 54 I C 705 F B

(*m*) *Syed Hasan Imam* v *Brahmdeo Singh* (1930) 9 Pat 747, 126 I C 299, ('30) A P 301

(*n*) *Sati Prasad* v *Gobinda Chandra* (1929) 56 Cal 805, ('29) A C 325.

(*o*) 9 Pat 747 *supra*

(*p*) *Veeramma* v *Abbiah* (1895) 18 Mad 99 F B

THE
INDIAN REGISTRATION ACT
ACT XVI OF 1908.

(RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 18TH DECEMBER 1908.)

An Act to consolidate the enactments relating to the Registration of Documents.

WHEREAS it is expedient to consolidate the enactments relating to the registration of documents, It is hereby enacted as follows —

PART I.

Preliminary.

Short title extent and commencement

1. (1) This Act may be called the Indian Registration Act, 1908

(2) It extends to the whole of British India, except such districts or tracts of country as the Local Government may exclude from its operation

(3) It shall come into force on the first day of January, 1909.

Repealed Acts.– The following is a list of the earlier Registration Acts all of which are now repealed —

1 Act 16 of 1864 amended by Act 9 of 1865.

2 Act 20 of 1866

3 Act 8 of 1871

4 Act 3 of 1877, amended by Acts 12 of 1879, 19 of 1883, 7 of 1886, 7 of 1888, 13 of 1889, 12 of 1891, and 17 of 1899

Ss. 1, 2 (1)-(5)

The earlier enactments relating to registration are chiefly of importance in regard to questions of priority and notice as to which see sec 50

An Act to consolidate —The object of the present Act was to collect the provisions relating to registration which were scattered about in several enactments and to incorporate them in one Act As to the construction of a consolidating Act see the undermentioned cases (*a*)

British India —See for the definition of British India the General Clauses Act 10 of 1897 sec 3 (7)

Which Registration Act to apply —By sec 6 of the General Clauses Act 1 of 1868 as well as the General Clauses Act 10 of 1897 the proceedings in a suit must be governed by the Registration Act in force at the institution of the suit and not by that which may be in force when it comes on for hearing (*b*)

Definitions

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "addition" means the place of residence, and the profession, trade, rank and title (if any) of a person described, and, in the case of a Native of India his caste (if any) and his father's name or where he is usually described as the son of his mother, then his mother's name

(2) "book" includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book

(3) "district" and "sub district" respectively mean a district and sub district formed under this Act

(4) "District Court" includes the High Court in its ordinary original civil jurisdiction

(5) "endorsement" and "endorsed" include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act

---

(*a*) *Bank of England* v *Vagliano* [1891] A C 107 144 45 *Administrator General* v *Premlal* (1895) 22 Cal 788 798, 22 I A 107 *Norendra* v *Kamal Basini* (1896) 23 Cal 563, 23 I A 18

(*b*) *Syud Mahomed* v *Hadi Abdullah* (1878) 3 Cal 727 *Oghra Singh* v *Ablakhi Kooer* (18 9) 4 Cal 536

(6) "immoveable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass **S. 2 (6)-(10)**

(7) "lease" includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease

(8) "Minor" means a person who, according to the personal law to which he is subject, has not attained majority

(9) "Moveable property" includes standing timber, growing crops and grass fruit upon and juice in trees, and property of every other description, except immoveable property and

(10) "Representative" includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot

SEC. 2 (4)—DISTRICT COURT.

District Court—The District Courts mentioned in the Act must be taken to be the Courts exercising the ordinary original civil jurisdiction within the district, and therefore in the case of a Regulation Province to import the ordinary Zilla Courts (c) 'District Court includes the High Court in its ordinary original civil jurisdiction The High Court of Allahabad has no ordinary original civil jurisdiction, and it is not therefore a District Court within the meaning of the definition (d)

SEC. 2 (6)—IMMOVEABLE PROPERTY.

Definition of immoveable property in earlier Acts—The Registration Act 16 of 1864 did not contain any definition of immoveable property The first Registration Act in which the definition appeared was Act 20 of 1866 It did not include in express terms 'fisheries' or "hereditary allowances 'Fisheries were added in the definition by the Registration Act 20 of 1866, and hereditary allowances' by sec 3 of Act 3 of 1877

Immoveable property—The interest of a tenant in his holding is an interest in immoveable property (e) And so is the interest which a person has in a coal mine (f) But the right of a Dandidar, *i e*, a weighman who

(c) *Reasut Hossein v Hadjee Abdoollah* (1876) 2 Cal 131, 137 3 I A 221

(d) *Mukhun Lal v Koondun Lall* (1875) 24 W R 75, 78 2 I A 210

(e) *Nabira v Achampat* (1881) 3 All 422 423, *Rangayya v Kameswara Rau* [1897] 20 Mad 367, 369

(f) *Petman v Ganesh Das* (1916) Punj Rec No 49 34 I C 512

S. 2 (6) negotiates the sale of paddy, is not a right in immoveable property (*g*), nor is the right to the status of a Karnavan (*h*)

"Includes"—The inconclusive verb "includes" shows that the definition is not intended to be exhaustive When the Legislature intends to speak exhaustively, it uses the word "mean or "means" (*i*)

"Hereditary allowances"—Hereditary allowances were included in the definition of immoveable property ' for the first time by the Registration Act 3 of 1877 Before that enactment the question arose whether hereditary offices in a Hindu community were immoveable property The expression immoveable property ' occurred in sec 1, cl 12, of the Indian Limitation Act 14 of 1859 The High Court of Bombay held that immoveable property" must, for the interpretation of that clause, when it concerns the rights of Hindus, be taken to include whatever the Hindu law classes as immoveable (*j*) Referring to this rule their Lordships of the Privy Council said in *Maharana Fattehsangji v Dessai Kallianraiji* (*k*), which was also a case under the Limitation Act, that they saw *no objection to the application of that rule* within proper limits and that Hindu texts might legitimately be used to show that, in the contemplation of Hindu law, hereditary offices in a Hindu community *incapable of being held by any person not a Hindu* were in the nature of immoveable property (nibandla) Following these remarks of the Judicial Committee it has been held by the High Court of Bombay in cases governed by the Registration Acts 16 of 1864 and 20 of 1866, that *sukhdi* allowance (*l*) payable out of the Government treasury and incidental to the *hereditary* office of a Desai, which is capable of being held not only by a Hindu, but also by a Mahomedan or Parsi was not immoveable property under those Acts (*m*) Such allowances, however, constituted immoveable property under Act 3 of 1877, they having been expressly included in the definition of "immoveable property, and they constitute immoveable property under the present Act But an annual payment for the expenses of a temple, though it be in perpetuity, is not a ' hereditary allowance" Such an allowance "is not an allowance by Government or secured in such a way as can constitute it an *hereditary* allowance If enforceable at all after the death of the contractor, it can only be enforced against his general estate in the hands

(*g*) *Lakhan v Arjun* (1914) 18 Cal W N 1194 24 I C 387

(*h*) *Kenath Puthen v Narayanan* (1905) 28 Mad 182 184

(*i*) *Balvantrao v Purshotam* (1872) 9 Bom H C 99 105 106, *The Empress v Ashootosh* (1879) 4 Cal 483 493, *The Empress v Paramanjiyya* (1878) 2 Mad 5 7, *Nisibun v Treeshanker Ghose* (1882) 8 Cal 534, 536

(*j*) *Balvantrao v Purshotam* (1872) 9 B m H C 99

(*k*) (1874) 1 I A 34, 50 10 Bom H C 281 288

(*l*) i e, an allowance paid as a solatium

(*m*) *Desai Motilal v Purshotam* (1894) 18 B m 92, *Hanmant v Ramabai* (1919) 21 Bom L R 716 719, 51 I C 954 [allowance to Deshpande family]

of his legal representative, so long as that estate remains undistributed It is a mere personal obligation which the contractor has undertaken, not secured in any way whatever" (n) But a hereditary right to toda giras (o) payable by an inamdar out of the rents of the village is not a mere personal obligation it attaches to the inamdar into whosoever hands the village may pass, and is, it is submitted, a 'hereditary allowance" within the meaning of this section (p) S. 2 (6)

"Rights to ways."—No writing is necessary for the creation of an easement and the provisions of the Transfer of Property Act have no application to the grant of an easement There is a dictum, however, in a Calcutta case that if a right of way is created in writing, registration may be necessary if the value of the right is not less than Rs 100 (q)

"Right to lights."—See notes to sec 17 (1) (b), Easement of light '

"Fisheries."—A fishing lease for more than a year requires registration (r)

"Benefit to arise out of land"—The right to recover assessment from tenants is a benefit arising out of land (s) And so is the right to recover market dues upon a piece of land (t) A transfer of *future* rents payable in respect of land is a transfer of a benefit to *arise* out of land, but not a transfer of rents which have already accrued (u) Profits *already* due by a Lambardar to a co sharer are not " benefit to *arise* out of land ' (v), though profits *to accrue* are A right to hold a market is an incident of the ownership of land (w) An agreement limiting the right to hold a market to particular days requires registration (x) The right of a mortgagee of a mill to receive a salary out of the income of the mill in consideration of his managing and financing the mill is not a benefit arising out of land (y) The right of the manager of a Hindu temple, though involving the holding of immoveable

(n) *Vishnu* v *Yeshvantrao* (1897) 21 Bom 387, 391

(o) Toda giras was originally a cash composition which secured protection from plunder, but is now an item in the rent roll of some villages

(p) See *Maharana Fattehsangji* v *Dessai Kallianraiji* (1874) 1 I A 34, 53, 10 Bom H C 281, 291

(q) *Sital Chandra* v *Delanney* (1916) 20 Cal W N 1158, 1164, 34 I C 450

(r) See *Behary Lal* v *Kedar Nath* (1915) 19 Cal W. N 872, 29 I C 806.

(s) *Venkaji* v *Shidramapa* (1895) 19 Bom 663, 667, *Anandrao* v *Joti* (1900) 24 Bom 615 617 *Malharrao* v *Kashibai* (1910) 34 Bom 287, 290 291, 5 I C 599

(t) *Sikandar* v *Bahadur* (1905) 27 All 462, 463

(u) *Mangalaswami* v *Subbia Pillai* (1911) 34 Mad 64 66 67, 6 I C 504

(v) *Damodar Das* v *Girdhari Lal* (1905) 27 All 564

(w) *Hem Chandra* v *Krishna Chandra* (1920) 47 Cal 1079, 58 I C 879

(x) *Ganesh Singh* v *Sitla Baksh* (1931) 5 Luck. 504, 131 I C 65, (31) A O 110

(y) *Hope Mills* v *Sir Cowasji* (1910) 13 Bom L R 162, 10 I C 748

S. 2 (6) property forming part of the endowments of the temple, is not a benefit arising out of land (z)

"**Things attached to the earth**"—See Mulla's Transfer of Property Act, sec 3, notes (9) to (19)

"**Permanently fastened to anything which is attached to the earth.**"—To constitute the machinery in a factory immoveable property, it must be *attached to the earth* or *permanently fastened* to anything which is attached to the earth It is not enough that it is fastened to something attached to the earth In the case in which it was so held, Jenkins, C J, said The evidence, as I have already said, is meagre as to the extent and intention of annexation, but looking to the fact that the insolvent who erected them was only a monthly tenant, I am unable to hold that they were *permanently* fastened, on the contrary, I think they were not" (a) See Mulla's Transfer of Property Act, sec 3, note (18)

Standing timber, growing crops and grass.—Standing timber, growing crops and grass are not immoveable property They are expressly included in the definition of "moveable property" in sub sec (9) By the term 'timber' is meant properly such trees only as are fit to be used in building and repairing houses A tree which is primarily a fruit tree, *e g*, a mango tree, may be classed as a timber tree if according to the custom of the locality its wood is used in building and repairing houses (b)

It has been held by a Full Bench of the Madras High Court, that though standing timber, growing crops and grass are moveable property, they are so only if the agreement provides for their *immediate severance and removal from the soil* and delivery as chattels to the transferee, but if no *immediate* severance and removal is intended, *e g*, where a transfer is made of a right to cut and remove standing timber and grass growing on the transferor's land for a period of *four* years, the transfer is one of an interest in immoveable property, the reason given being that in such a case it is contemplated that the transferee should derive a benefit from the further growth of the thing sold and from the nutriment to be afforded by the land (c) In a subsequent Allahabad case (d), the cutting was to begin from the date of the document, and a period of two years was allowed for cutting down and removing the timber It was held that the transaction was no more than a sale of standing timber, and, therefore, did not amount to a transfer of an interest in immoveable property and the document did not require registration In the Madras case referred to above the document gave a

(z) *Kesava* v *Kannusamy* (1905) 15 Mad L J 30

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(b) *Krishnarao* v *Babaji* (1900) 24 Bom 31, 33

(c) *Seeni* v *Santhanathan* (1897) 20 Mad 58, 64 66 [F B]

(d) *Mathura Das* v *Jalubir* (1906) 28 All 277

right to the enjoyment of the forest produce, grass, gum, nuts, etc, for a term of four years in addition to a right to cut the timber and it was held that the document created an interest in immoveable property and required registration The question in each case is one of construction of the document A usufructuary mortgage with possession by the owner of a grove of timber trees with power to the mortgagee to receive the profit thereof in lieu of interest is a mortgage of the right and interest of the the mortgagor as grove holder, and a mortgage, therefore, of immoveable property as distinguished from a mortgage merely of a right in standing timber which is a mortgage of moveable property (e) S. 2 (6, 7)

A mortgage of the sugar cane crop of a field (f), or of future indigo crops that may be grown upon a specified plot of land (g), is a mortgage of moveable property.

SEC. 2 (7)—LEASE.

Earlier Registration Acts.—There was no definition of "lease" in the Registration Act 16 of 1864 It was accordingly held under that Act that a counterpart, kabuliyat or an agreement to lease, did not require registration under that Act (h) The first Registration Act in which the definition of 'lease' appeared was Act 20 of 1866 (i)

Lease.—A 'lease' of immoveable property is defined in sec 105 of the Transfer of Property Act, 1882, as a *transfer* of a right to enjoy such property made *for a certain time* express or implied or *in perpetuity in consideration of* a price paid or promised or of money, share of crops, service or any other thing of value to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms Lease is not defined in the Registration Act, but it bears much the same meaning as in the Transfer of Property Act (j) According to the above definition, there are three essentials of a lease, namely,—

(1) a transfer,

(2) a period [the enjoyment may be for a specified period or in perpetuity (k)], and

(3) amount of rent and time of payment (l)

(e) *Deo Chand* v *Pearay* (1914) 12 All L J 1133, 1135, 27 I C 430 Contrast *Asaram* v *Nur Din* (1900) Punj Rec No 66

(f) *Kalka Prasad* v. *Chandan Singh* (1888) 10 All 20 23

(g) *Misri Lal* v *Mozhar* (1886) 13 Cal 262, 264

(h) *Anjed Ali* v *Ala Buksh* (1868) 9 W R 537, *Bunwaree Lal* v *Sungum Lal* (1867) 7 W R 280, *Hur Chunder* v *Hooma Soon duree* (1875) 23 W R 170

(i) *Ram Coomar* v *Kishari* (1883) 9 Cal 68, 69

(j) *Janakinath Ray* v *Mahendra narayan Ray* (1930) 57 Cal 775, 782, 126 I. C. 550, ('30) A C 94

(k) (1930) 57 Cal 775, 782, 126 I C 550, ('30) A C 94, *supra*

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S. 2 (7) A document collateral to a lease, which is not inconsistent with the lease, is not a lease A executed a lease to B of certain lands at an annual rent the lease to be one in perpetuity The lease was executed on July 4, 1895, but by reason of subsisting leases, it was not to take effect till 1912. On July 9, 1895, pursuant to an agreement made during the negotiations for the lease, B passed a writing to A whereby he agreed to pay to A Rs 500 per month for ten years from July 1895 The lease was registered, but the writing was not Upon these facts it was held by the Privy Council that the writing was not a lease and that it did not require registration Their Lordships said "The agreement for the payment of Rs 500 a month for ten years from July 1895 is in no way inconsistent with the lease of the 4th of that month Its provisions form no part of the terms of the holding *under the lease* their effect will be exhausted some years before the lease *takes effect* The payment *bargained for* is no charge *on the property*, it is *not rent* nor recoverable as rent, but *a mere personal obligation collateral to the lease* Their Lordships are of opinion that the agreement is not affected by section 92 of the Evidence Act, and that there is nothing in the Registration Act or in the Transfer of Property Act which required that it should be registered as part of the lease" (*m*) But a document which varies the amount of rent to be paid under an existing lease registered as required by sec 17 (1) (d) of this Act, as also the incidents of such payment, namely, the date of payment and consequences of default of payment amounts to a fresh lease and requires registration (*n*) see notes to sec 17 (1) (d) below, "Variation of lease" Where, *after* lands are let under a verbal agreement and the lessee enters into possession under such agreement, an entry is made in the lessor s book and signed by the lessee showing the extent of the holding and the amount of rent, the entry is neither a lease nor an agreement to lease, but a mere admission on the part of the lessee of the area let to him and the amount of rent (*o*) But if possession is taken *under* the writing, the writing operates as a lease or an agreement to lease and requires registration (*p*) A petition of compromise which merely recites

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(*n*) *Lalit Mohan v Gopali* (1912) 39 Cal 284, 297, 12 I C 723 [F B]

(*o*) *Narain v Ramkrishna* (1880) 5 Cal 864

(*p*) *Port Canning Land Improvement Co v Katjani* (1919) 47 Cal 280, 285 286, 46 I A 270, 281 282, 53 I C 522 in app from (1914) 19 Cal W N 56 25 I C 274

a previous oral agreement to lease, without setting forth any of its terms, is neither a lease nor an agreement to lease (*q*)

As regards oral agreements to lease, it may be stated that an oral agreement to lease is valid Sec 107 of the Transfer of Property Act, which provides for certain leases being made only by registered instrument refers to leases as distinguished from agreements to lease, that is, to actual transfers of property and not to agreements to transfer by way of lease (*r*)

Counterpart.—It has been held by the High Court of Bombay that a *Hadekhat*, that is, a writing by which a tenant agrees to pay a specified rent for the property let to him, and signed by the tenant alone, is in the nature of a counterpart of a lease, and therefore a 'lease' within the meaning of this clause (*s*) Such a writing, it is conceived, may be more appropriately described as a kabuliyat

Kabuliyat: *Whether a lease should be signed by the lessor* —There was at one time a conflict of opinion as to whether the registered instrument by which a lease can be effected under sec 107 of the Transfer of Property Act, 1882, must bear not only the signature of the lessee but also of the lessor It was held by the High Courts of Madras (*t*) and Calcutta (*u*) that the instrument need not be signed by the lessor The High Courts of Allahabad (*v*) and Rangoon (*w*) held that the instrument must be signed by the lessor also if not so signed, it is not a lease within the meaning of that section, though it may amount to a kabuliyat or an agreement to lease within this clause (*x*) The reason given by the High Courts of Calcutta and Madras for their decision was that before the passing of the Transfer of Property Act, a kabuliyat executed by the lessee, if registered where registration was necessary, was sufficient to constitute a lease, that it was not necessary for the creation of a lease that the landlord should grant a pattah it being sufficient if the tenant executed a kabuliyat which was accepted by the landlord, and that sections 4 and 107 of the Transfer of Property Act read with sec 2 (7) of the Registration Act point to the view that a lease under sec 107 includes a kabuliyat and that it does not require to be signed

(*q*) *Pitamber v Uddhab* (1907) 12 Cal W N 59

(*r*) *Sm Baranshi v Papat* (1919) 25 Cal W N 220 229 63 I C 118

(*s*) *Moro Vithal v Tukaram* (1868) 5 Bom H C A C 92

(*t*) *Syed Ajam v Ananthanarayana* (1910) 35 Mad 95 8 I C 668 [F B]

(*u*) *Ramani v Mathura* (1912) 16 Cal W N 606 608 609, 14 I C 540

(*v*) *Kashi Gir v Jogendro Nath* (1904) 27 All 136 *Beni v Puran Das* (1904) 27 All 190 But see *Sheo Karan v Maharaja Parbhu Narain* (1909) 31 All 276 2 I C 211

(*w*) *U Tha Nyo v Maung Kyaw Tha* (1925) 3 Rang 379 380 90 I C 693 (25) A R 273 *Maung Ba Sein v Maung Htoon Shwe* (1927) 5 Rang 95 96 102 I C 105, (27) A R 95

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Counterpart.—It has been held by the High Court of Bombay that a *Hadchhat* that is, a writing by which a tenant agrees to pay a specified rent for the property let to him, and signed by the tenant alone, is in the nature of a counterpart of a lease, and therefore a "lease" within the meaning of this clause (*s*) Such a writing, it is conceived, may be more appropriately described as a kabuliyat

Kabuliyat: *Whether a lease should be signed by the lessor*—There was at one time a conflict of opinion as to whether the registered instrument by which a lease can be effected under sec 107 of the Transfer of Property Act 1882, must bear not only the signature of the lessee, but also of the lessor It was held by the High Courts of Madras (*t*) and Calcutta (*u*) that the instrument need not be signed by the lessor The High Courts of Allahabad (*v*) and Rangoon (*w*) held that the instrument must be signed by the lessor also, if not so signed, it is not a lease within the meaning of that section, though it may amount to a kabuliyat or an agreement to lease within this clause (*x*) The reason given by the High Courts of Calcutta and Madras for their decision was that before the passing of the Transfer of Property Act, a kabuliyat executed by the lessee, if registered where registration was necessary, was sufficient to constitute a lease, that it was not necessary for the creation of a lease that the landlord should grant a pattah, it being sufficient if the tenant executed a kabuliyat which was accepted by the landlord, and that sections 4 and 107 of the Transfer of Property Act read with sec 2 (7) of the Registration Act point to the view that a lease under sec 107 includes a kabuliyat and that it does not require to be signed

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S. 2 (7) by the lessor To put end to the conflict a clause has been inserted in sec 107 of the Transfer of Property Act, 1882, which says that where a lease of immoveable property is made by a registered instrument such instrument, or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee This clause was inserted by sec 55 of the Transfer of Property (Amendment) Act, 1929, 20 of 1929

Undertaking to cultivate or occupy.—The expression "undertaking in this clause means an undertaking *accepted* by the landlord which would give the tenant an interest in the land, not an undertaking to take up the land if the landlord should at some future time desire it Hence a lease for one year certain containing an expression on the tenant's part of readiness to hold the land longer at the same rent if the *landlord* should desire it is a lease for a term not exceeding one year, and therefore, not compulsorily registrable (*y*)

Agreement to lease—Sec 2, cl 7, says that "lease" includes ' an agreement to lease ' To constitute an "agreement to lease within the meaning of this clause, it must be one which creates a *present and immediate* demise The leading case on the subject is *Hemanta Kumari* v *Midnapur Zamindari Co* (*z*) In that case the Judicial Committee held that a document by which one of the parties agrees that if he succeeded in a suit which he had brought to recover certain land, he would grant to the other a lease of that land upon specified terms, is not an ' agreement to lease within the meaning of this clause and does not require registration under sec 17 (1) (d) In the course of the Judgment their Lordships said —

' The Indian Registration Act of 1908 provides that ' lease includes an agreement to lease and by sec 17 enacts that leases must be registered, the penalty for non registration being imposed by sec 49, which provides that, if not registered, no document shall affect immoveable property which it comprises or be received as evidence of any transaction affecting such property If the document in question can be regarded as a lease within the meaning of this definition it could not be received in evidence Their Lordships are of opinion that it cannot be so regarded An agreement to lease, which a lease is by the statute declared to include, must in their Lordships' opinion be a document which effects an actual demise and operates as a lease They think that Jenkins C J, in the case of *Panchanan Bose* v *Chandra Charan Misra* (1910) 37 Cal 808, 6 I C 443, correctly stated the interpretation of sec 17 in this respect The present agreement is an agreement that, upon the happening of a contingent event at a date which was

(*y*) *Apu Budgavda* v *Narhari* (1879) 3 Bom 21, *Moro Vithal* v *Tukaram* (1868) 5 Bom H C A C 92

(*z*) (1919) 47 Cal 485 46 I A 240, 53 I C 534

S 2 (7)

in l t rmu ate an l having regard to the slow progress of Indian litigation might be far li tant a l a c s oul l l e granted Until the happening of that ev n it wa imp ib le to determine whether there would be any lease or not S ich an agreement doe not in their Lor lships opinion satisfy the meaning of the phra e agreement to lease " which, in the context where it occurs and in th statute in which it is found must in their opinion relate to some document that creat s a pr ent an l imme liate interest in the land So far therefore as this d ci i n depen ls upon the need for registration of the document as a lea the Indian Regi tration Act places no obs acle in the respondents way

It is clear from the above ju lgment that an agreement to lease within the meaning of cl 7 mu t be an agreement which effects an actual demi e an l operates as a lease It must be a document which creates a *present an l immediate* intere t in the lan l (a)

A kanom mortgage in Madras is a combination of a mortgage and a lease and if it is not redeemed the lease is renewable on payment of a renewal fee An agreement to renew on payment of this fee does not operate as a demise until the fee is paid (b)

The view taken by a Full Bench of the Madras High Court (c) that an agreement to lea e must be registered as a lease whether it creates a present demise or not can no longer be regarded as good law since the decision of the Privy Council in *He ta Kumari* s case and this was recognized by a Divi ion Bench of the same High Court in a later case (d)

If an agreem nt creates a present demise it is as stated above a lease an l it require registration under sec 17 (1) (d) if not registered it cannot b a lmitte l in evi lence except un ler the proviso to sec 49 of the Act But if an agreement does not effect a present demise and is merely an agreement to create a lea e on a future day the terms of wh ch are to be lefined by a

(a) *Hem ta Ku ar* v *M dnap r Z ndari Co* (1913) 47 Cal 485 46 I A 240 45 53 I C 531 app r ving *I ncl nan* v *Cha li Ch r n* (1910) 37 Cal 808 6 I C 443 *P r nan ndl s* v *H rs j* (188) 10 Bo 101 *S r Maho ed I f* v *Sec etary f St t* (1 1) 45 Bom 8 57 I C 71 (21) A B 10) *Sanj b Ch l t v S t h K n r* (1) 43 Cal 307 69 I C 877 ( ) A C 43 *P j o Mal n l* v *H d s Mull k* (1925) 52 C l 15 51 I C 39 ( ) A C 1087 *J e Ma ecklal M l l* (19) 53 Bom 1 6 7 11 I C 758 (28) A B 53 *Nanak Ch nd* v *Muha na l* (1923) 4 Lal 44 73 I C 397 (24) A L 27 *Ma ng Ba Se* v *Maung Htoon Shwe* (1927) 5 Rang 95 10 I C 105 (27) A R 153 *M t Paj Rani* v *F r Huk Chand* (1 30) 1 Lal L J 77 125 I C 618 (3) A L 6 5

(b) *I l y i K l y n Kr shna n* (193) 55 Mal 519 138 I C 78 (32) A M 305

(c) *V yan Ch t j* v *Muth ah S j* (1 1) 3 Mad 63 8 I C 5 0

(d) *S va ha* v *Ra asa a* (19 1) 44 Mal 309 6 I C 354 (1) A M 7

S. 2 (7) by the lessor. To put end to the conflict a clause has been inserted in sec. 107 of the Transfer of Property Act, 1882, which says that where a lease of immoveable property is made by a registered instrument, such instrument, or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee. This clause was inserted by sec. 55 of the Transfer of Property (Amendment) Act, 1929, 20 of 1929.

Undertaking to cultivate or occupy.—The expression "undertaking" in this clause means an undertaking *accepted* by the landlord which would give the tenant an interest in the land, not an undertaking to take up the land if the landlord should at some future time desire it. Hence a lease for one year certain containing an expression on the tenant's part of readiness to hold the land longer at the same rent if the *landlord* should desire it, is a lease for a term not exceeding one year, and, therefore, not compulsorily registrable (*y*).

Agreement to lease.—Sec. 2, cl. 7, says that "lease includes 'an agreement to lease.' To constitute an 'agreement to lease' within the meaning of this clause, it must be one which creates a *present and immediate* demise. The leading case on the subject is *Hemanta Kumari* v. *Midnapur Zamindari Co.* (*z*). In that case the Judicial Committee held that a document by which one of the parties agrees that if he succeeded in a suit which he had brought to recover certain land, he would grant to the other a lease of that land upon specified terms, is not an "agreement to lease" within the meaning of this clause and does not require registration under sec. 17 (1) (d). In the course of the Judgment their Lordships said:—

"The Indian Registration Act of 1908 provides that 'lease includes an agreement to lease,' and by sec. 17 enacts that leases must be registered, the penalty for non registration being imposed by sec. 49, which provides that, if not registered, no document shall affect immoveable property which it comprises or be received as evidence of any transaction affecting such property. If the document in question can be regarded as a lease within the meaning of this definition it could not be received in evidence. Their Lordships are of opinion that it cannot be so regarded. An agreement to lease, which a lease is by the statute declared to include, must in their Lordships' opinion, be a document which effects an actual demise and operates as a lease. They think that Jenkins, C. J., in the case of *Panchanan Bose* v. *Chandra Charan Misra* (1910) 37 Cal. 808, 6 I. C. 443, correctly stated the interpretation of sec. 17 in this respect. The present agreement is an agreement that, upon the happening of a contingent event at a date which was

(*y*) *Apu Budgavda* v. *Narhari* (1879) 3 Bom. 21; *Moro Vithal* v. *Tukaram* (1868) 5 Bom. H. C. A. C. 92.

(*z*) (1919) 47 Cal. 485, 46 I. A. 240, 53 I. C. 531.

indeterminate and having regard to the slow progress of Indian litigation, might be far distant a lease would be granted Until the happening of that event it was impossible to determine whether there would be any lease or not Such an agreement does not in their Lordships opinion, satisfy the meaning of the phrase agreement to lease,' which, in the context where it occurs and in the statute in which it is found must in their opinion relate to some document that creates a present and immediate interest in the land So far, therefore, as this decision depends upon the need for registration of the document as a lease the Indian Registration Act places no obstacle in the respondents' way "

It is clear from the above judgment that an "agreement to lease" within the meaning of cl 7 must be an agreement which effects an actual demise and operates as a lease It must be a document which creates a *present and immediate* interest in the land (a)

A kanom mortgage in Madras is a combination of a mortgage and a lease and if it is not redeemed the lease is renewable on payment of a renewal fee An agreement to renew on payment of this fee does not operate as a demise until the fee is paid (b)

The view taken by a Full Bench of the Madras High Court (c) that an agreement to lease must be registered as a lease whether it creates a present demise or not can no longer be regarded as good law since the decision of the Privy Council in *Hemanta Kumari's* case, and this was recognized by a Division Bench of the same High Court in a later case (d)

If an agreement creates a present demise, it is, as stated above, a "lease," and it requires registration under sec 17 (1) (d), if not registered, it cannot be admitted in evidence except under the proviso to sec 49 of the Act But if an agreement does not effect a present demise, and is merely an agreement *to* create a lease on a future day, the terms of which are to be defined by a

(a) *Hemanta Kumari v Midnapur Zamindari Co* (1919) 47 Cal 485, 46 I A 240, 245 53 I C 531, approving *Panchanan v Chandi Charan* (1910) 37 Cal 808, 6 I C 443, *Purmanandlas v Dharsey* (1886) 10 Bom 101, *Sir Mahomed Yusuf v Secretary of State* (1921) 45 Bom 8, 57 I C 971, ('21) A. B 100, *Sanjib Chandra v Santosh Kumar* (1922) 49 Cal 507, 69 I C 877, ('22) A C 430, *Ramjoo Mahomed v Haridas Mullick* (1925) 52 Cal 695, 91 I C 320 ('25) A C 1087, *Re Maneeklal Manilal* (1929) 53 Bom 1, 6 7, 112 I C 758, ('28) A B 553, *Nanak Chand v Muhammad* (1923) 4 Lah 44, 73 I C 927, ('24) A L 27, *Maung Ba Sein v Maung Htoon Shwe* (1927) 5 Rang 95, 102 I C 105, ('27) A R 159, *Must Raj Rani v Firm Hukum Chand* (1930) 12 Lah L J 77, 125 I C 618, ('30) A L 675

(b) *Valiya Kalyani v Krishnam* (1932) 55 Mad. 519, 138 I C. 78, ('32) A M 305

(c) *Narayanan Chetty v Muthiah Servay* (1912) 35 Mad. 63, 8 I C 520

(d) *Swaminatha v Ramaswami* (1921) 44 Mad 399, 62 I C 354, ('21) A M 72

S. 2 (7) document or documents to be thereafter executed, it is not an "agreement to lease" and it may be enforced by a suit for specific performance (*e*)

Whether an agreement amounts to a present demise or not depends upon *the intention of the parties as declared by the words of the instrument* (*f*). An agreement may operate as a present demise although the term is to commence at a future date (*g*) Similarly an agreement may operate as a present demise, although a formal document is to be executed Such a provision, no doubt, is a circumstance to be looked at but if the document contains words of present demise such as "I let" or "I agree to let," and contains the essential terms of a lease, it will operate as a present demise unless there is something else in the document to show that a present demise was not intended (*h*) "The introduction into an agreement of words referring to a future lease does not disprove the possibility of a present demise being intended" (*i*)

As a general rule, where rent is payable under an agreement from the *date* of the agreement, the agreement creates a present demise and is an "agreement to lease" (*j*) Similarly, where possession is given *under* an agreement, the agreement operates as a present demise and is an "agreement to lease" (*k*) When a party who admitted that he had occupied a site

(*e*) *[illegible]* (1910) 37 Cal 808, 6 I C 431; *Sir Mahomed Yusuf* v. *Secretary of State* (1921) 45 Bom 8, 57 I C 971, (21) A I R [illegible]; *Hemanta* v. *[illegible] Nath* (1920) 25 Cal W N 550, 61 I C 717, (21) A I C 127; *Re Manilal [illegible]* (1920) [illegible] Bom 1, 112 I C 758 (28) A I R 531 (a case under the Indian Stamp Act, 1899); *[illegible]* v. *[illegible]*, 7 Bom L R App 21; *[illegible]* v. *[illegible]* (1903) 3 Bom L R App 1; *Chapman* v. *Towner* (1840) 6 M & W 100, 151 E R 338.

(*f*) *Parmanandas* v. *Dhirsey* (1886) 10 Bom 101 104; *[illegible] Mahomed* v. *Harilal Malak* (1925) 52 Cal 695 700 701, 91 I C 520 (25) A I C 1087; *Poole* v. *Bentley* (1810) 12 East 168; *[illegible]* v. *[illegible]* (1841) 2 M & W 461

(*g*) *[illegible] Mahomed* v. *Harilal Malak* (1925) 52 Cal 695, 707, 91 I C 520 (25) A I C 1087, dissenting from *[illegible] Nath* v. *[illegible]* (1908) 14 C W N 65, 5 I C 18; *[illegible]* v. *[illegible]* (1810) 12 East 168, *Doe* v. *Clare* (1812) 15 East 214; *[illegible]* v. *[illegible]* (1930) 32 Bom L R 188 125 I C 428 (30) A I R 210

(*h*) *Parmanandas* v. *Dhirsey* (1886) 10 Bom 101, 104; *[illegible]* v. *Harilal Malak* (1925) 52 Cal 695, 703 91 I C 520 (25) A I C 1087; *[illegible]* v. *[illegible]* (1842) 8 Bing 178; *[illegible]* v. *[illegible]* (1930) 32 Bom L R 125 I C 428, (30) A I R [illegible]; *[illegible]* v. *[illegible]* [illegible] 12 [illegible] 18, [illegible]

(*i*) [illegible]

(*j*) [illegible]

(*k*) [illegible]

without permission was allowed to remain in possession on his agreeing to pay rent the agreement was a lease and required registration (l) But it is otherwise if the agreement is merely a memorandum relating to a previous transaction by which the tenant had obtained possession of the property (m) **S. 2 (7)**

An agreement to lease may be contained in a single document or it may be contained in two or more letters In either case it requires registration if it creates a present demise (n)

Illustrations

(1) By a writing dated 7th March 1798 A agreed to let to *B* certain premises from the 5th April 1798 *Held* that the agreement amounted to a present demise of the premises In the course of his judgment Lord Ellenborough C J observed If by the terms of this agreement it had been provided that there should be no entry until a lease was executed I should have had considerable doubts But as the case stands it does appear to me that the instrument must be considered as a present lease from the 5th April 1798 From that period it has the operation of a demise, not depending upon the contingency of the party s granting a future lease which was a stipulation only for the better security of the lessee *Doe* v *Groves* (1812) 15 East 244 246

(2) On 6th October 1882 *P* passed a writing to *D* in the following terms I agree to give you a contract for my property called the market at the rate of 17 per cent per month more than it realizes now The rent to commence from 1st October 1882 The rent to be paid on the first day of each and every month On the same day *D* deposited Rs 500 with *P* and agreed to deposit a further sum of Rs 500 the next day The writing contained a provision that if *D* failed to pay the Rs 500 the next day the Rs 500 paid by *D* should be forfeited to *P* It also contained a clause that if *D* failed to pay the rent on the due date he should have no claim upon the deposit (Rs 1 000) Provision was also made for the execution and registration of a formal lease *Held* that the writing operated as an actual demise and amounted to an agreement to lease within the meaning of sec 2 (7) of this Act and required registration under sec 17 (d) *Purmananddas* v *Dharsey* (1886) 10 Bom 101 In the course of his judgment Sargent, C J said — We think that the agreement in question operated as an actual demise, and required to be registered under clause (d) of sec 17 of the

(l) *Sakaram* v *Sur Isrsingh* (1931) 134 I C 263 (31) A N 128

(m) *Port Canning Land Improvement Co* v *Kalyani* (1919) 47 Cal 280 285 286 46 I A 73 53 I C 52? 510 *Narain* v *Rat Krishna* (1880) 5 Cal 864

(n) *Morgan* v *Fernandez* (1916) 30 Mad L J 519 523 33 I C 439 *Boyd* v *Craig* (1890) 17 Cal 548, 554 *Ranjoo Mahomed* v *Haridas Mullick* (1925) 52 Cal 695 91 I C 320 (25) A C 1087 *Nur Muhammad* v *Natwar Lal* (1923) 45 All 250 71 I C 459, (23) A A 112 *Chuni Lal* v *Gopiram* (1927) 45 Cal L J 32, 100 I C 404 (27) A C 275 [latter held not to create a present demise]

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As a general rule, where rent is payable under an agreement from the *date* of the agreement, the agreement creates a present demise and is an "agreement to lease" (*j*) Similarly, where possession is given *under* an agreement, the agreement operates as a present demise and is an "agreement to lease" (*k*) When a party who admitted that he had occupied a site

(*e*) *Panchanan* v *Chandi Charan* (1910) 37 Cal 808, 6 I C 433, *Sir Mahomed Yusuf* v *Secretary of State* (1921) 45 Bom 8, 57 I C 971, (21) A B 200, *Harinath* v *Promotho Nath* (1920) 25 Cal W N 550 64 I C 747, (21) A. C 127, *Re Maneckla Manilal* (1929) 53 Bom 1, 112 I C 758, (28) A B. 553 (a case under the Indian Stamp Act, 1899), *Haji Abdul* v *Haji Harone*, 7 Beng L R App 21, *Bhairabnath* v *Kishori* (1870) 3 Beng L. R App 1, *Clapman* v *Towner* (1840) 6 M & W. 100, 151 E R 338

(*f*) *Purmananddas* v *Dharsey* (1886) 10 Bom 101, 104, *Ramjoo Mahomed* v *Haridas Mullick* (1925) 52 Cal 695 700 701, 91 I C 320 (25) A C 1087, *Poole* v *Bentley* (1810) 12 East 168, *Gore* v *Lloyd* (1844) 2 M. & W 463

(*g*) *Ramjoo Mahomed* v *Haridas Mullick* (1925) 52 Cal 695, 707, 91 I C 320, (25) A C 1087, dissenting from *Satyendra Nath* v *Anil Chandra* (1908) 14 C W N 65 5 I C. 38, *Poole* v *Bentley* (1810) 12 East 168, *Doe* v *Groves* (1812) 15 East 244, *Sultanali* v *Tyeb* (1930) 32 Bom L R 188, 125 I C 428, (30) A B 210

(*h*) *Purmananddas* v *Dharsey* (1886) 10 Bom 101, 104, *Ramjoo Mahomed* v *Haridas Mullick* (1925) 52 Cal 695, 705, 91 I C 320, (25) A C 1087, *Doe* v *Ries* (1832) 8 Bing 178, *Sultanali* v *Tyeb* (1930) 32 Bom L R 188, 125 I C 428, (30) A B 210, *Must Raj Rani* v *Firm Hukam Chand* (1930) 12 Lah L J 77, 125 I C 618, (30) A L 675, *Kanti Chandra* v *Brojendra* (1929) 49 Cal L J 12, 116 I C 630, ('29) A. C 186 [no rent fixed—held to be not a present demise]

(*i*) *Jones* v *Reynolds* (1841) 1 Q B 506, 516, 113 E R 1226, 1230

(*j*) *Purmananddas* v *Dharsey* (1886) 10 Bom 101

(*k*) *Port Canning Land Improvement Co* v *Kalyani* (1919) 47 Cal 280, 285 286, 46 I A 279, 281 282, 53 I C 522, in app from (1914) 19 Cal. W. N 50, 25 I. C 274.

without permission was allowed to remain in possession on his agreeing to pay rent the agreement was a lease and required registration (*l*) But it is otherwise if the agreement is merely a memorandum relating to a previous transaction by which the tenant had obtained possession of the property (*m*)

An agreement to lease may be contained in a single document or it may be contained in two or more letters In either case it requires registration if it creates a present demise (*n*)

Illustrations

(1) By a writing dated 7th March 1798 *A* agreed to let to *B* certain premises from the 5th April 1798 *Held* that the agreement amounted to a present demise of the premises In the course of his judgment Lord Ellenborough, C J, observed If by the terms of this agreement it had been provided that there should be no entry until a lease was executed, I should have had considerable doubts But as the case stands it does appear to me that the instrument must be considered as a present lease from the 5th April 1798. From that period it has the operation of a demise, not depending upon the contingency of the party's granting a future lease, which was a stipulation only for the better security of the lessee' *Doe* v *Groves* (1812) 15 East 244 246

(2) On 8th October 1882 *P* passed a writing to *D* in the following terms I agree to give you a contract for my property called 'the market at the rate of 17 per cent per month more than it realizes now The rent to commence from 1st October 1882 The rent to be paid on the first day of each and every month On the same day *D* deposited Rs 500 with *P* and agreed to deposit a further sum of Rs 500 the next day The writing contained a provision that if *D* failed to pay the Rs 500 the next day, the Rs 500 paid by *D* should be forfeited to *P* It also contained a clause that if *D* failed to pay the rent on the due date, he should have no claim upon the deposit (Rs 1 000) Provision was also made for the execution and registration of a formal lease *Held* that the writing operated as an actual demise and amounted to an agreement to lease" within the meaning of sec 2 (7) of this Act and required registration under sec 17 (d) *Purmananddas* v *Dharsey* (1886) 10 Bom 101 In the course of his judgment Sargent, C J, said — 'We think that the agreement in question operated as an actual demise, and required to be registered under clause (d) of sec 17 of the

(*l*) *Salurim* v *Sunderstingh* (1931) 134 I C 263 (31) A N 128

(*m*) *Port Canning Land Improvement Co* v *Katjani* (1919) 47 Cal 280, 285 286, 46 I A 273 53 I C 522, 516, *Narain* v *Ramkrishna* (1880) 5 Cal 864

(*n*) *Morgan* v *Fernandez* (1916) 30 Mad L J 519, 523, 33 I C 439, *Boyd* v *Craig* (1890) 17 Cal 548, 554, *Ramjoo Mahomed* v *Haridas Mullick* (1925) 52 Cal 695, 91 I C 320, (25) A C 1087, *Nur Muhammad* v *Natwar Lal* (1923) 45 All 220, 71 I C 452, ('23) A. A 112, *Chuni Lal* v *Gopiram* (1927) 45 Cal L J 32, 100 I C 404, (27) A C 275 [latter held not to create a present demise]

S. 2 (7) Registration Act III of 1877 The terms, 'I agree to give you a contract for my property,' taken in connection with the provision as to rent and the period for which the contract was to last, are equivalent to saying, 'I agree to let you my property for four years from the 1st October, 1882, at the above rent,' words which in the absence of anything in the instrument evincing an intention to the contrary are sufficient to create an actual demise It was said that the circumstance of the document providing for a *pucka* agreement to be drawn by the lessor, and stamped and registered at the lessee's expense, showed that the parties were only contending for a future formal lease But although such a proviso has an important bearing on the question whether an actual demise was intended, still it has been often ruled that where words of present demise have been used, the question must depend on the paramount intention of the parties Now, here the agreement, which is dated the 8th October, 1882, provides that the lease was to commence from the 1st October—a date already passed, that the rent was to commence from that day, and the rent then due to be paid by next day This shows clearly that the defendant was regarded as tenant for four years from the 1st October, 1882, subject to a right of forfeiture in the lessor if the Rs 500 were not paid next day We think, therefore, that under sec 17 of the Registration Act III of 1877 this document ought to have been registered, and that not having been registered it was not admissible in evidence under the provisions of sec 49"

(3) On 19th November 1921 *A* wrote a letter to *B* —"I do hereby agree to take by our personal settlement your house and premises No 7, Bow Bazar Street, on a lease for 21 years under the following terms (1) Rs 4,000 salami, (2) rent Rs 400 per month, (3) both taxes, owner and occupier, should be paid by me, (4) thorough repair will be done every five years, (5) the period of lease will be settled from 1st December 1921" *B* replied — "I confirm your letter dated 19th November 1921 All terms will be settled on the agreement" *Held* that the terms contained in the two letters amounted to a present demise of the premises, and that they constituted an 'agreement to lease' within the meaning of sec 2 (7) of this Act, and the letters therefore required registration The mere fact that the parties contemplated a formal lease as indicated by the words 'all terms will be settled on the agreement,' did not negative the intention to create a present demise *Ramjon Mahomed* v *Haridas Mullick* (1925) 52 Cal 695, 91 I C 320, ('25) A C 1087

(4) By a memorandum of agreement dated 24th April 1831 *P* agreed to let to *D*, and *D* agreed to take, a house from 24th June 1831 for the term of 21 years The memorandum provided that the lease to be granted by *P* was to contain a covenant on the part of *D* for payment of the rent of £35, payable quarterly, and provision as to insurance and repairs, and that *D* should

execute a counterpart of the lease when tendered to him by the solicitor of *P*, and that the expense of the lease and counterpart was to be paid by *D* *Held* that the agreement did not create a present demise In the course of the judgment Parke *B* said — No doubt, if there are words of present demise, if the instrument shews it to be the intention of the landlord that the premises shall be enjoyed by the tenant immediately, or at a future specified day, upon certain terms a demise is thereby created, and a stipulation that a lease shall be afterwards prepared does not prevent its so operating Here *there are words which in their ordinary sense are those of agreement only*, but may operate unquestionably as words of present demise—and frequently do so operate but in this case the contract shews that they are used as words of agreement only for the amount of rent, the periods of payment, and other terms of holding are not mentioned, *except as they are to be contained in a lease which is to be prepared* There is, therefore, no complete demise independently of that lease A lease is to be made absolutely and at all events and not at the request of the party, and a counterpart is to be executed by the defendant *Chapman* v *Towner* (1840) 6 M & W 100 103 151 E R 338

(5) By a writing dated February 16, 1915, *A* agrees to let his building then under construction to *B* for a period of ten years commencing from April 1 1915 the probable date of the completion of the building On April 1 1915 *B* enters into possession of the building with *A* s consent though the building is not completed on that date, and pays rent to *A* up to July 1915 No lease is executed and in August 1915 *A* gives notice to *B* to quit *B* sues *A* for specific performance The agreement is not an ' agreement to lease for it did not create a present demise, and it does not require registration The making of improvements was a condition precedent and the fact that *B* waived the condition by entry into possession did not affect the construction of the agreement which was executory *Sir Mahomed Yusuf* v *Secretary of State* (1921) 45 Bom 8, 57 I C 971 (21) A B 200

Conditional agreement—A writing by which *A* agrees to allow *B* to hold free of rent his lands for nine years and to grant a lease thereof to *B* after that period provided *B* clears the jungle (the land being then covered with jungle) is not an agreement to lease,' as the agreement is not absolute, but conditional upon *B* clearing the jungle (*o*) A writing by which *A* agrees to grant a lease to *B* on the happening of a contingent event does not effect an actual demise and is not an agreement to lease as defined in this section (*p*)

(*o*) *Dwarka Nath* v *Ledu* (1906) 33 Cal 502

(*p*) *Hemanta Kumari Debi* v *Midnapur Zamindari Co* (1919) 46 I A 240, 47 Cal 485, 53 I C 534 (1919) A. PC 79 *Lachhmann Singh* v *Todar Mal* (1931) 130 I C 6, (31) A A 252

S 2(7, 8) **Sale not lease**—The essential characteristic of a lease is that the subject is one which is occupied and enjoyed and the corpus of which does not in the nature of things and by reason of such user disappear (*q*) Hence an agreement by which the defendants on payment of the sum of Rs 500 were given liberty to remove sand and earth from plaintiff s plots and were required to level the plots after such removal was held to be a sale although the parties were styled lessor and lessee in the document (*r*)

Doul darkhast—A *doul darkhast* if it amounts to nothing more than a proposal by a tenant to pay a certain rent for certain lands, does not amount to a lease or an agreement to lease But if it is accepted by the landlord it may amount to a lease or an agreement to lease in which case it must be registered in cases where registration is necessary (*s*)

Doul fehrist—A *doul fehrist* is a memorandum by a zamindar s agent of rents settled between the zamindar and the ryots to which the ryots affix their signatures in testimony of their admission of the correct ness of the jumma thereon recited as having been imposed on them Such a memorandum is not in itself an agreement, and does not require registration as such (*t*)

Amalnama—An *Amalnama* which in essence only authorizes the grantee to take possession and is intended to be followed by a formal kabuliyat is neither a lease nor an agreement to lease (*u*)

License—A license must be distinguished from a lease One of the essentials of a lease is rent or consideration in some other form (*v*) A writing whereby *A* agrees to allow *B* to build on *A* s land and to use and occupy the building during his life is not a lease, but a license, as there is no rent reserved nor any other consideration agreed upon (*w*)

SEC. 2 (8)—MINOR

"**Minor**"—See Indian Majority Act 9 of 1875, sec 3

(*q*) *Girdhari Singh v Megh Lal* (1917) 44 I A 246 45 Cal 87 42 I C 651

(*r*) *Kanjee Mooljee Bros v Shanmugam Pillai* (1933) 56 Mad. 164 139 I C 870 (32) A M 734

(*s*) *Syed Sufdar v Amjad Ali* (1881) 7 Cal. 703 [F B] *Maharaja Luchmissur v Mussammat* (1881) 7 Cal. 708 *Lall Jha v Negro* (1881) 7 Cal 717 *Chomee v Chundee Lall* (1870) 14 W R. 178, *Meherunnissa v Abdool Cunee* (1872) 17 W R 509 *Hakim v Hukum* (1914) 19 Cal L J 464 467 20 I C 907

(*t*) *Gungapersad v Gogun Sing* (1877) 3 Cal 322

(*u*) *Lakshan v Talim* (1924) 28 C. W N 1033 80 I C 357, (24) A C 558 *Dwarka Nath v Ledu Sikdar* (1906) 33 Cal 502

(*v*) See Transfer of Property Act 1882, s 105 *Ishan v Soya* (1871) 15 W R 331 at p 332

(*w*) *Hargam v Basant* (1919) Punj Rec No 124 p 322 53 I C. 451

SEC. 2 (9)—MOVEABLE PROPERTY.

S. 2 (9,10

Definition of moveable property in earlier Acts.—The Registration Act 16 of 1864 did not contain any definition of moveable property, The first Registration Act in which the definition appeared was Act 20 of 1866 It did not include in express terms juice in trees " ' Juice in trees" was added in the definition by sec 3 of Act 8 of 1871

Standing timber, growing crops and grass.—See notes to cl (6) above under the same head, on p 6 above

Fruit upon trees.—Fruits upon trees are moveable property whether they exist at the date of the contract (*x*) or fruits to grow in future (*y*)

Juice in trees.— 'Juice in trees was first added in the definition of moveable property by sec 3 of Act 8 of 1871 The addition seems to have been suggested by the decision of the Bengal High Court in the under mentioned case (*z*), where it was held that a lease granted by the proprietor of date trees to take the juice of the trees is not a lease of immoveable, but of moveable property A lease of the gum of trees is also a lease of moveable property (*a*)

SEC. 2 (10)—REPRESENTATIVE.

Representative.—It has been held by the Privy Council that if the adoptive father is dead, and the minor adoptive son is residing with his natural father, the natural father is the representative of the adoptive son, especially if he is the nearest male agnate of the son, which would be the case if the adoption took place in the same family (*b*) The High Court of Madras has held that the father of a minor Hindu girl who is married is neither her natural guardian nor her ' representative ' (*c*) The real owner is not the representative of a benamidar (*d*) See secs 32, 40, 41 and 77

Lunatic.—See the Indian Lunacy Act IV of 1912, secs 63 and 71

(*x*) *Nasir* v *Karamat* (1880) 3 All 168, 170

(*y*) *Raja Devi* v *Muhammad Yaqub* (1925) 47 All 738, 88 I C 109, (25) A A 411 [mango crop], *Asaram* v *Nur Din* (1900) Punj Rec No 66

(*z*) *Janoo* v *Hucha* (1868) 12 W R 366 The decision in *Sukry* v *Goondakul* (1871) 6 Mad H C 71, which was a case under the Registration Act 20 of 1866, is erroneous The Court overlooked the definition of "moveable property ' in sec 2 of the Act see *Raja Devi* v *Muhammad Yakub* (1925) 47 All 738, 740, 88 I C 109, (25) A.A. 411

(*a*) *Orr* v *Kumarasvamy* (1895) 5 Mad L J 27

(*b*) *Venkatapayya* v *Venkata Ranga* (1929) 56 I A 21, 52 Mad. 175, 114 I C 17, (29) A PC 24

(*c*) *Narayana Reddy* v *Audilakshmi* (1928) 51 Mad 462, 109 I C 548, (28) A M. 537, *Amba* v *Shrinivasa* (1921) 26 C W N. 369, 374, 68 I C 754, (22) A. PC 135 [P C]

(*d*) *Selamatulla Chaudhuri* v *Aktarernessa* (1931) 58 Cal 681, 133 I C 591 (31) A C 664

PART II.

Of the Registration Establishment.

Ss. 3-5

Inspector General of Registration

3. (1) The Local Government shall appoint an officer to be the Inspector-General of Registration for the territories subject to such Government

Provided that the Local Government may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government appoints in this behalf

(2) Any Inspector General may hold simultaneously any other office under Government

Branch Inspector General of Sindh

4. (1) The Governor of Bombay in Council may also appoint an officer to be Branch Inspector-General of Sindh, who shall have all the powers of an Inspector General under this Act other than the power to frame rules hereinafter conferred

(2) The Branch Inspector General of Sindh may hold simultaneously any other office under Government

Districts and sub districts

5. (1) For the purposes of this Act, the Local Government shall form districts and sub districts, and shall prescribe, and may alter the limits of such districts and sub districts

(2) The districts and sub districts formed under this section, together with the limits thereof and every alteration of such limits, shall be notified in the local official Gazette

(3) Every such alteration shall take effect on such day after the date of the notification as is therein mentioned

Registrars and Sub-Registrars

6. The Local Government may appoint such persons, whether public officers or not as it thinks proper to be Registrars of the several districts and to be Sub-Registrars of the several sub districts formed as aforesaid, respectively

Provided that the Local Government may delegate, subject to such restrictions and conditions as it thinks fit to the Inspector General of Registration the power of appointing Sub Registrars

Appoint. Under sec 15 of the General Clauses Act 10 of 1897, the power to appoint includes a power to appoint *ex officio* Accordingly the Bombay Government have appointed Collectors in the districts of the Presidency of Bombay to be *ex officio* Registrars See Bombay Government Notification No [illegible], Revenue, dated 12th February, 1902

Proviso —The proviso was added by Sch Pt I, of the Decentralization Act 4 of 1914

Offices of Registrar and Sub-Registrar

7. (1) The Local Government shall establish in every district an office to be styled the office of the Registrar and in every sub district an office or offices to be styled the office of the Sub-Registrar or the offices of the Joint Sub-Registrars

(2) The Local Government may amalgamate with any office of a Registrar any office of a Sub Registrar subordinate to such Registrar, and may authorize any Sub Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act

May amalgamate.—Thus the Bombay Government have directed that the City of Bombay shall be a Registration district and sub district, and amalgamated the office of the Sub Registrar with that of Registrar See Bombay Government Notification No 8531, Revenue, dated 16th December, 1887

May authorize any Sub Registrar.—See notes under sec 30

Hear an appeal —See the under mentioned case (e)

(e) *Jehelo Sheikh* v *Jabannessa Bibee* (1913) 18 C W N 605 20 I C 661

PART II.

Of the Registration Establishment.

Ss. 3-5

Inspector General of Registration

3. (1) The Local Government shall appoint an officer to be the Inspector General of Registration for the territories subject to such Government

Provided that the Local Government may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector-General shall be exercised and performed by such officer or officers, and *within such local limits*, as the Local Government appoints in this behalf

(2) Any Inspector General may hold simultaneously any other office under Government

Branch Inspector General of Sindh

4. (1) The Governor of Bombay in Council may also appoint an officer to be Branch Inspector-General of Sindh, who shall have all the powers of an Inspector-General under this Act other than the power to frame rules hereinafter conferred

(2) The Branch Inspector General of Sindh may hold simultaneously any other office under Government

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5. (1) For the purposes of this Act the Local Government shall form districts and sub-districts, and shall prescribe and may alter the limits of such districts and sub districts

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Provided that the Local Government may delegate, subject to such restrictions and conditions as it thinks fit to the Inspector General of Registration the power of appointing Sub Registrars

Appoint. Under sec 15 of the General Clauses Act 10 of 1897, the power to appoint includes a power to appoint *ex officio* Accordingly the Bombay Government have appointed Collectors in the districts of the Presidency of Bombay to be *ex officio* Registrars See Bombay Government Notification No 966 Revenue dated 12th February, 1902

Proviso. The proviso was added by Sch Pt I, of the Decentralization Act 4 of 1914

Offices of Registrar and Sub-Registrar

7. (1) The Local Government shall establish in every district an office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar or the offices of the Joint Sub-Registrars

(2) The Local Government may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate :

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act

May amalgamate.—Thus the Bombay Government have directed that the City of Bombay shall be a Registration district and sub district, and amalgamated the office of the Sub Registrar with that of Registrar See Bombay Government Notification No 8531, Revenue, dated 16th December, 1887

May authorize any Sub-Registrar.—See notes under sec 30

Hear an appeal.—See the under mentioned case (e)

(e) *Jehelo Sheikh* v *Jaibannessa Bibee* (1913) 18 C W N 605, 20 I C 661

S. 8-10

8. (1) The Local Government may also appoint officers, to be called Inspectors of Registration offices, and may prescribe the duties of such officers

Inspectors of Registration Offices

(2) Every such Inspector shall be subordinate to the Inspector-General

Local Amendments—The section has been amended, in its application to the Presidency of Bombay by sec 2 of the Indian Registration (Bombay Amendment) Act 5 of 1929 which came into force on the 22nd May 1929 The Amendment is as follows —

To sub section (1) of section 8 of the Indian Registration Act 1908, hereinafter called the said Act, the following shall be added, namely —

"Provided that the Local Government may delegate subject to such restrictions and conditions as it thinks fit, to the Inspector General of Registration the power of appointing inspectors of registration offices "

9. *Repealed by the Repealing and Amending Act* 10 *of* 1927

The repealed section was as follows —

Every Military Cantonment may (if the Local Government so directs) be, for the purposes of this Act a sub district or a district, and the Canton ment Magistrate shall be the Sub Registrar or the Registrar of such sub district or district as the case may be

10. (1) When any Registrar, other than the Registrar of a district including a Presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector General appoints in this behalf or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's Office is situate, shall be the Registrar during such absence or until the Local Government fills up the vacancy

Absence of Registrar or vacancy in his office

(2) When the Registrar of a district including a Presidency town is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector General appoints in this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy

Ss. 11-13

Absence of Registrar on duty in his district

11. When any Registrar is absent from his office on duty in his district he may appoint any Sub Registrar or other person in his district to perform during such absence, all the duties of a registrar except those mentioned in sections 68 and 72

Absence of Sub Registrar or vacancy in his office

12. When any Sub Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub Registrar during such absence, or until the vacancy is filled up

Report of certain appointments and suspension and removal and dismissal of officers

13. (1) All appointments made by the Inspector-General under section 6 and all appointments made under section 10, section 11 or section 12 shall be reported to the Local Government by the Inspector General

(2) Such report shall be either special or general, as the Local Government directs

(3) The Local Government may suspend, remove or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead and the Inspector General of Registration may, subject to such conditions and restrictions as the Local Government may impose exercise the like power in the case of Sub Registrars appointed by him

Local Amendments — The section has been amended, in its application to the Presidency of Bombay by sec 3 of the Indian Registration (Bombay Amendment) Act 5 of 1929 which came into force on the 22nd May, 1929 The amendment is as follows —

In section 13 of the said Act [the Indian Registration Act, 1908],

(1) sub sections (1) and (2) shall be repealed , and

(2) after the word 'Sub Registrars the words 'and Inspectors of Registration offices' shall be inserted '

Ss. 14-16

Remuneration and establishment of registering officers

14. (1) The Local Government may assign such salaries as such Government deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries

(2) The Local Government may allow proper establishments for the several offices under this Act

Seal of Registering Officers

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs —" The seal of the Registrar (*or* of the Sub-Registrar) of "

Register books and fire proof boxes

16. (1) The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act

(2) The books so provided shall contain the forms from time to time prescribed by the Inspector-General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued

(3) The Local Government shall supply the office of every Registrar with a fire proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such districts

PART III.

Of Registrable Documents.

Documents of which registration is compulsory.

17. (1) The following documents shall be registered, if the property to which they relate is situate in a district in which and if they have been executed on or after the date on which Act No XVI of 1864 or the Indian Registration Act, 1866 or the Indian Registration Act 1871 or the Indian Registration Act 1877, or this Act came or comes into force namely **S. 17 (1)**

(a) instruments of gift of immoveable property,

(b) other non testamentary instruments which purport or operate to create declare assign limit or extinguish, whether in present or in future, any right title or interest whether vested or contingent of the value of one hundred rupees and upwards to or in immoveable property,

(c) non testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation declaration assignment, limitation or extinction of any such right title or interest, and

(d) leases of immoveable property from year to year, or for any term exceeding one year or reserving a yearly rent

(e) *non testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immoveable property* ·

S. 17 (2) Provided that the Local Government may, by order published in the Local Official Gazette, exempt from the operation of this sub section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees

(2) Nothing in clauses (b) and (c) of sub section (1), applies to—

(i) any composition deed, or

(ii) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property, or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures, or

(iv) any endorsement upon or transfer of any debenture issued by any such Company, or

(v) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest *of the value of one hundred rupees and upwards to or* in immoveable property, but merely creating a right to obtain another document which will when executed, create, declare assign limit or extinguish any such right, title or interest, or

(vi) any decree or order of a Court *except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject matter of the suit or proceeding*, or

(vii) any grant of immoveable property by Government, or S. 17 (2), (3)

(viii) any instrument of partition made by a Revenue officer; or

(ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883, or

(x) any order granting a loan under the Agriculturists Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act, or

(xi) any endorsement on a mortgage deed acknowledging the payment of the whole or any part of the mortgage money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage, or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue officer

EXPLANATION —A document purporting or operating to effect a contract for the sale of immoveable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money

(3) Authorities to adopt a son, executed after the first day of January 1872 and not conferred by a will, shall also be registered

SEC 17, FIRST PARA

Corresponding sections of the earlier Acts :—

Secs 13 *and* 14 *of Act* 16 *of* 1864 ran as follows —

13 No instrument being a deed of gift of immoveable property, no lease of immoveable property for any period exceeding one year, no instrument (other than a deed of gift or lease as aforesaid) which purports or operates to create, declare transfer or extinguish any right, title, or interest of the value of one hundred rupees or upwards in any immoveable property,

S. 17 Prel. and no instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, transfer, or extinction of any right, title, or interest as above, of such value as aforesaid, in any immoveable property, shall be received in evidence in any civil proceedings in any Court or shall be acted upon by any Public Officer, if such instrument shall have been executed on or after the date on which this Act shall come into operation, and if the property to which such instrument relates shall be situate in any part of British India in which this Act is in force, unless the same shall have been registered in the manner and within the time prescribed by this Act Provided that the provisions of this section shall not apply to any lease executed between landlord and tenant relative to land in the Presidency of Madras liable to the payment of revenue to Government, but any such lease may be registered under section 16, subject to the provisions of sections 17 and 19 "

" 14 For the purpose of this Act, the value of the right, title or interest in any immoveable property created, declared, transferred or extinguished, by any instrument shall be taken to be the value indicated by the stamp affixed thereto or impressed thereon under Act X of 1862 (to consolidate and amend the law relating to Stamp Duties), or under any other Act for the time being in force for regulating the Stamp Duties "

Sec 17 *of Act* 20 *of* 1866 was as follows —

'The instruments next hereinafter mentioned shall be registered, provided the property to which they relate shall be situate in a district in which, and provided they shall have been executed on or after the date on which the said Act No XVI of 1864, or this Act shall have come into operation, (that is to say) —

" (1) Instruments of gift of immoveable property

" (2) Instruments (other than an instrument of gift) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property

" (3) Instruments which acknowledge the receipt or payment of any consideration on account of the creation declaration, assignment, limitation or extinction, of any such right, title or interest and

" (4) Leases of immoveable property for any term exceeding one year

" Provided that the former part of this section shall not apply to any Composition deed nor to any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company shall consist, in whole or in part, of immoveable property, nor to any endorsement upon

S. 1 Prel

or transfer of any debenture issued by such Company Provided, also, that so far only as regards the Territories respectively under the Governments of the Lieutenant Governors of Bengal and the North West Provinces, the Local Government may by order published in the official Gazette, exempt from the operation of the former part of this section any leases of immoveable property executed in any particular District or part of a District, the terms granted by which shall not exceed two years and the annual rents reserved by which shall not exceed fifty rupees "

Sec 17 of Act 8 of 1871 ran as follows —

"*The documents next hereinafter mentioned shall be registered*, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which Act No XVI of 1864, or Act No XX of 1866 or this Act came or comes into force (that is to say) —

"(1) Instruments of gift of immoveable property

"(2) Other instruments (not being wills) which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immoveable property

(3) Instruments (not being wills) which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment limitation or extinction of any such right, title or interest, and

(4) Leases of immoveable property from year to year or for any term exceeding one year or reserving a yearly rent

Provided that the Local Government may, by order published in the official Gazette exempt from the operation of the former part of this section any leases executed in any District or part of a District, the terms granted *by which do not exceed five years, and the annual rents reserved by which* do not exceed fifty rupees

Nothing in clauses (2) and (3) of this section applies

(a) to any composition deed

(b) to any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property or

(c) to any endorsement upon, or transfer of any debenture issued by any such Company

S. 17 Prel. and no instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, transfer, or extinction of any right, title or interest as above of such value as aforesaid, in any immoveable property shall be received in evidence in any civil proceedings in any Court or shall be acted upon by any Public Officer, if such instrument shall have been executed on or after the date on which this Act shall come into operation, and if the property to which such instrument relates shall be situate in any part of British India in which this Act is in force, unless the same shall have been registered in the manner and within the time prescribed by this Act Provided that the provisions of this section shall not apply to any lease executed between landlord and tenant relative to land in the Presidency of Madras liable to the payment of revenue to Government, but any such lease may be registered under section 16, subject to the provisions of sections 17 and 19

" 14 For the purpose of this Act the value of the right, title or interest in any immoveable property created declared, transferred or extinguished, by any instrument shall be taken to be the value indicated by the stamp affixed thereto or impressed thereon under Act X of 1862 (to consolidate and amend the law relating to Stamp Duties), or under any other Act for the time being in force for regulating the Stamp Duties "

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" (1) Instruments of gift of immoveable property

" (2) Instruments (other than an instrument of gift) which purport or operate to create, declare, assign limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, of the value of one hundred rupees and upwards to or in immoveable property

" (3) Instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest and

' (4) Leases of immoveable property for any term exceeding one year

" Provided that the former part of this section shall not apply to any Composition deed nor to any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company shall consist, in whole or in part, of immoveable property, nor to any endorsement upon

or transfer of any debenture issued by such Company *Provided also that* so far only as regards the Territories respectively under the Governments of the Lieutenant-Governors of Bengal and the North West Provinces the Local Government may by order published in the official Gazette exempt from the operation of the former part of this section any leases of immoveable property executed in any particular *District* or part of a District the terms granted by which shall not exceed two years and the annual rents reserved by which shall not exceed fifty rupees

Sec 17 of Act 8 of 1871 ran as follows

The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which Act No XVI of 1864, or Act No XX of 1866 or this Act came or comes into force (that is to say) —

(1) Instruments of gift of immoveable property

(2) Other instruments (not being wills) which purport or operate to create declare assign limit or extinguish, whether in present or in future, any right title or interest whether vested or contingent of the value of one hundred rupees and upwards to or in immoveable property

(3) Instruments (not being wills) which acknowledge the receipt or payment of any consideration on account of the creation, declaration assignment limitation or extinction of any such right title or interest, and

(4) Leases of immoveable property from year to year, or for any *term exceeding one year or reserving a yearly rent*

Provided that the Local Government may by order published in the official Gazette exempt from the operation of the former part of this section any leases executed in any District or part of a District, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees

Nothing in clauses *(2)* and *(3) of this section applies*

(a) to any composition deed

(b) to any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property or

(c) to any endorsement upon, or transfer of any debenture issued by any such Company

S. 17 Prel.

"Authorities to adopt a son, executed after the first day of January, 1872, and not conferred by a will shall also be registered"

Sec 17 *of Act* 3 *of* 1877 as amended by subsequent enactments corresponded with the present section See notes under sec 1 above

AMENDMENTS OF THE SECTION.

Cl (e) of sub sec (1) was inserted and cl (vi) of sub sec (2) was amended by the Transfer of Property (Amendment) Supplementary Act 1929, sec 10 The Explanation at the end of sub sec (2) was inserted by the Indian Registration (Amendment) Act, 1927, sec 2

SEC. 17 (1), FIRST PARA.

Operation of the Act · Registration under the earlier Acts — The provisions of this Act apply to all documents tendered in evidence on or after January 1, 1909, if they have been executed on or after the date on which the Registration Act 16 of 1864, or 20 of 1866 or 8 of 1871, or 3 of 1877, or this Act came into force (*f*) The document, however, must be one which was compulsorily registrable under the Act in force at the time when it was executed Thus a kabuliyat or counterpart of a lease did not require registration under the Act of 1864 It was made compulsorily registrable for the first time by the Act of 1866 Hence an unregistered kabuliyat executed while the Act of 1864 was in force is not inadmissible in evidence under this Act, neither was it inadmissible under the Act, 1877 (*g*) The question whether registration was compulsory is governed by the registration law in force at the time when the document was executed, but the question of admissibility, being a matter of procedure would be governed by the present law (*h*) At the same time it is to be remembered that the object of the Registration Act of 1877 was to admit to the benefit of the mitigations of the rigour of the law documents which were executed before 1877 when the registration law was more stringent Thus an agreement for sale required registration under the Act of 1871 but was exempted from registration under cl (k) of sec 17 of the Act of 1877 [now sec 17 (2) (b)], it is therefore admissible in evidence though not registered (*i*)

(*f*) See *Raju* v *Krishnarav* (1878) 2 Bom 273 281 [the document in this case was compulsorily registrable]

(*g*) *Ram Coomar* v *Kishari* (1883) 9 Cal. 68, *Desai Motilal* v *Parashotam* (1894) 18 Bom. 92, *Intizam Fatima* v *Ali Baksh* (1910) 8 All L. J 609 10 I C 314

(*h*) *Khuda Bakhsh* v *Sheo Din* (1886) 8 All 405 408 409 *Fakirji* v *Bhagvatlal* (1929) 31 Bom L R 493 119 I C 793 (29) A. B 290, *Datto* v *Babasaheb* (1934) 58 Bom 419 36 Bom L R 359, 150 I C 535 (34) A B 194

(*i*) *Fakirji* v *Bhagvatlal* (1929) 31 Bom L. R 493 119 I C 793 (29) A B 290

S. 17 Prel

Interpretation of the Act The strictest construction should be placed on the penalising and penal provisions of the Registration Act which impose serious disqualifications for non-observance of registration (*j*). Sec. 17 of the Act being a disabling section must be construed strictly (*k*). Unless a document is clearly brought within the purview of sec. 17 its non-registration is no bar to its being admitted in evidence (*l*). If there is any doubt on the subject the benefit of the doubt must be given to the person who wants the Court to receive the document in evidence (*m*), and so in spite of the rule of strict construction there is a point at which it is unnecessary to multiply technicalities (*n*). The criterion for purposes of registration is what is expressed on the face of the document, not what incidents may be annexed by custom to a grant of the kind (*o*).

Scope of the Act.—If the transaction has been validly effected without a document there is no foundation for applying the provisions of the Act (*p*). The Act refers to documents and the present section establishes the necessity for registration with regard to certain classes of documents defined in the section. The section is made effective by sec. 49, which provides that any document required to be registered under this section shall not, unless it has been registered, affect any immoveable property comprised therein or be received as evidence of any transaction affecting such property, while sec. 50 secures that registered documents shall, as regards the property they comprise, take effect against every unregistered document relating to the same property. It will be observed from these provisions how wide and general is the scope of the Act. In India non-registration in certain cases has the effect of rendering the document ineffectual even as between the grantor and grantee and excludes it from evidence. In England it is different (*q*).

Object of registration.—The real purpose of registration is to secure that every person dealing with property, where such dealings require registration, may rely with confidence upon the statements contained in the register as a full and complete account of all transactions by which his title may be affected unless indeed he has actual notice of some unregistered transaction which may be valid apart from registration. In England

(*j*) *Amjad Ali* v. *Ali Buksh* (1868) 9 W. R. 537; *Jiwan* v. *Basa* (1887) 9 All. 108, 114; *Meenakshisundara* v. *Rathnasami* (1918) 41 Mad. 959, 976, 49 I. C. 291.

(*k*) *Attra* v. *Mangal Singh* (1921) 2 Lah. 300, 301, 65 I. C. 254, ('22) A. L. 43.

(*l*) *Sansar Singh* v. *Tiloka* (1898) Punj. Rec. No. 51.

(*m*) *Attra* v. *Mangal Singh* (1921) 2 Lah. 300, 301, 65 I. C. 254, ('22) A. L. 43.

(*n*) *Nilabjabarani* v. *Nandarani* (1931) 58 Cal. 133, 133 I. C. 110, ('31) A. C. 478.

(*o*) *Pamaswamy* v. *Thirupathi* (1904) 27 Mad. 43, 45.

(*p*) *Pandurang* v. *Narmadabai* (1932) 56 Bom. 395, 140 I. C. 200, ('32) A. B. 571.

(*q*) *Tilakdhari Lal* v. *Khedan Lal* (1920) 47 I. A. 239, 48 Cal. 1, 10, 57 I. C. 465, ('21) A. PC. 112.

S. 17 Prel. such notice would merely prevent the registered document having priority over that which was unregistered The law in India goes further and in some cases the unregistered document is inoperative and inadmissible as evidence of the transaction See secs 54 and 59 of the Transfer of Property Act, 1882, and sec 49 of this Act *In either case the object of registration is to protect against prior transactions* (r) See note to sec 50, "Registration as notice"

Question of registration not affected by subsequent events.—The necessity for registration must be determined at the date of the instrument and not by subsequent events (s)

Part performance—It has been held by the Privy Council in *Mahomed Musa* v *Aghore Kumar Ganguli* (t) that when a document requires registration, but is not registered, the defect of want of registration may be cured by the conduct of the parties in continuously acting upon it for a long period In that case the document was executed in 1873, and the parties to it and their successors in title had dealt upon the footing of the rights created by the document for a period of between thirty and forty years Upon these facts the Privy Council held that though the document was not registered, effect should be given to it as if it was registered This rests on the doctrine of part performance now enunciated in sec 53A of the Transfer of Property Act, 1882 See notes to sec 49, "Part performance" and Mulla's Transfer of Property Act, 1882 sec 53A

Registration as notice—See notes to sec 50 under the same heading

Unregistered instrument confirmed by a subsequent registered instrument—*A* executes a deed of conveyance to *B* The deed requires registration under the Registration Act, but is not registered Subsequently *A* executes a document to *B* confirming the first deed The first deed is set out in a schedule as part of the second document, and the second document is registered The second document is admissible in evidence as proof of *B*s ownership of the property (u) But the ownership, it is submitted will commence only from the date of the second document

Illegal transactions—Registration cannot confer validity upon an instrument which is *ultra vires*, or illegal, or fraudulent The law of registration is intended to prevent and not to aid fraud (v)

(r) See *Tilakdhari Lal* v *Khedan Lal* (1920) 47 I A 239 48 Cal 1, 18 57 I C 465 (21) A PC 112 *Mitchell* v *Mathura Das* (1885) 8 All 6, 12 [P C]

(s) *Lakhmidas & Co* v *Sir D J Tata* (1927) 51 Bom 247, 101 I C 229, (27) A B 195

(t) (1915) 42 I A. 1, 42 Cal 801, 28 I C 930, *Nilkanth* v *Hanmant* (1920) 44 Bom. 881, 884 58 I C 415

(u) *Mitchell* v *Mathura Das* (1885) 8 All 6 11 12 12 I A 150, *Jamna bai* v *Dharsey* (1902) 4 Bom L R 893

(v) *Waman* v *Dhondiba* (1879) 4 Bom 126, 148

Foreign law.—The validity of a contract made in a Foreign State is governed by the law of that State Hence if a contract made in a Foreign State requires to be registered by the law of that State, no action can be entertained on it in British India if it is not registered, although registration may not be necessary according to the law in force in British India (*w*) **S. 17 (1) (a)**

Documents.—The words 'document' and 'instrument' are used interchangeably in the Act An instrument within the meaning of this and other sections of the Act may be constituted by two or more letters Two or more letters constituting a legal transaction are as much 'instruments' or 'documents' as formal deeds (*x*) The point was considered doubtful in an earlier case (*y*) The Privy Council case of *Port Canning Land Investment Reclamation and Dock Co v Smith* ( ), which is sometimes cited in this connection (*a*), is not an authority for the proposition that correspondence between parties does not constitute an "instrument" within the meaning of sec 17 of the Act All that was held by their Lordships of the Privy Council in that case was that the correspondence did not amount to a lease or an agreement for a lease but that it was evidence of a contract of a special character not coming within any of the definitions found in the Registration Act

Dekkhan Agriculturist's Relief Act, 17 of 1879—In a recent Bombay case (*b*) it was left an open question whether sec 10A of the Dekkhan Agriculturist s Relief Act which is in the nature of adjective law was intended to override the substantive provisions of the Indian Registration Act and the Transfer of Property Act

SEC. 17 (1) (a)—GIFTS.

"**Instruments.**"—A 'document' or 'instrument" does not cover an unsigned entry in an account book, but an entry of a formal deed of gift in an account book is a document and is invalid if not registered (*c*) A document is not executed until it is signed and, unless a document is executed, it is not liable to stamp duty and a fortiori is not registrable (*d*) See note, "Documents" above

(*w*) *Palaniappa v Periakaruppan* (1894) 17 Mad 262

(*x*) *Joharmal v Tejram* (1893) 17 Bom 235 237 [assignment], *Morgan v Fernandez* (1916) 30 Mad. L J 519, 33 I C 439 [lease] *Boyd v Kreig* (1890) 17 Cal 548, 554 [lease] *Jagannathan v Official Assignee* (1931) 60 Mad L J 309 129 I C 814 (31) A.M 124 (letter and memorandum embodying an agreement of mortgage by deposit of title deeds)

(*y*) *Waman v Dhondiba* (1879) 4 Bom 126, 139

(*z*) (1875) 1 I A 124, 143

(*a*) See *Suaminatha v Ramasicami* (1921) 44 Mad 399, at p 406, 62 I C 354, (21) A M 72

(*b*) *Dalu v Bahiru* (1927) 29 Bom L. R 1419, 105 I C 754, (27) A B 627

(*c*) *Totaram v Msst Isri Bai* (1933) 146 I C 363, (33) A Pesh 67

(*d*) *Tirkha v Sohlu* (1923) 5 Lah L.J 75, 71 I C 739, (23) A.L. 242

S. 17 (1) (a)

Immoveable property.—See notes to sec 2 (6)

Instruments of gift.—Before the Transfer of Property Act, 1882, no writing was necessary to effect a gift of immoveable property But if a gift was effected by a writing, the writing required registration under the Registration Act An instrument of gift of immoveable property requires registration under this Act whatever be the value of the property (*e*) If an agreement in writing between members of a joint Hindu family to allot a share of the joint family properties to an outsider is in the nature of a gift, it requires registration (*f*) See next paragraph

Registration of instrument of gift after donor's death.—Sec 123 of the Transfer of Property Act provides that for the purpose of making a gift of immoveable property, the transfer must be effected by a "registered" instrument The word "registered" in that section does not mean that the instrument should be registered in the lifetime of the donor If the donor dies before registration, the document may be presented for registration after his death, and, if registered, it will have the same effect as registration in his lifetime On registration the deed of gift operates as from the date of execution (*g*) See the next paragraph, "Registration of instrument of gift against donor's wish," sec 47 below

Registration of instrument of gift against donor's wish.—It was at one time held by the High Court of Madras that a donor could no more be compelled to register a deed of gift than to execute it in the first instance, and that if he retracted his consent before registration, the registering officer had no power to order compulsory registration either in his lifetime (*h*) or after his death (*i*), and that if it was compulsorily registered, the registration was void and the deed of gift ineffectual But those cases have been overruled by a Full Bench of the same Court which held that once a deed of gift is executed, the Registration Act allows it to be registered even though the donor may not agree to its registration (*j*) The principle of the

(*e*) *Protona* v *Mottea* (1869) 11 W R 334, *Chanan* v *Sucha* (1922) 4 Lah L J 7, ('22) A L 112

(*f*) *Made Gonda* v *Chenne Gonda* (1925) 49 Mad L J 150, 90 I C 331, ('25) A M 1174

(*g*) *Nand Kishore* v *Suraj Prasad* (1898) 20 All 392, *Meiyyalu* v *Anjalay* (1902) 25 Mad 672, *Venkati Rama* v *Pillati Rama* (1917) 40 Mad 204, 38 I C 707 [F B], *Khashaba* v *Chandrabhagabai* (1908) 32 Bom 441, *Kalyanasundaram* v *Karuppa* (1927) 54 I A 89, 95, 50 Mad 193 100 I C 105, ('27) A PC 42

(*h*) *Ramamirtha* v *Gopala Ayyan* (1896) 19 Mad 433

(*i*) *Dasi Svarnam* v *Devanayagam* (1915) 28 Mad L J 378, 28 I C 271, *Amirdam* v *Muthukumara* (1903) 13 Mad L J 303

(*j*) *Venkati Rama* v *Pillati Rama* (1917) 40 Mad 204, 38 I C 707 [F B], *Parbati* v *Baij Nath* (1913) 35 All 3, 16 I C 406

Madras Full Bench case was followed by a Full Bench of the High Court of Bombay (*k*) In that case it was held that where the donor of immoveable property has handed over to the donee an instrument of gift duly executed and attested and the gift has been accepted by the donee, the donor has no power to revoke the gift before the registration of the instrument Both the Madras and Bombay *decisions were confirmed on appeal by the Privy* Council in *Kalyanasundaram* v *Karuppa* (*l*) In that case their Lordships observed ' They are unable to see how the provision of sec 123 of the Transfer of Property Act can be reconciled with sec 47 of the Registration Act, except upon the view that, while registration is a necessary solemnity in order to the enforcement of a gift of immoveable property it does not suspend the gift until registration actually takes place When the instrument of gift has been handed by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective Registration does not depend upon his consent, but is the act of an officer appointed by law for the purpose, who, if the deed is executed by or on behalf of the donor and is attested by at least two witnesses, must register it, if it is presented by a person having the necessary interest within the prescribed period Neither death nor the express revocation by the donor, is a ground for refusing registration, if the other conditions are complied with Their Lordships accordingly find themselves in complete agreement with the judgment of the Full Bench of the Bombay High Court in the case cited As this decision, and the similar decision of the Full Bench of the Madras Court, has settled the law for these Presidencies it is unnecessary to refer to the various conflicting decisions of inferior tribunals which were overruled S. 17 (1) (a)

Revocation of gift—A gift may be subject to a condition making it revocable, but a gift revocable at the will of the donor is void In a Bombay case (*m*) the donor executed a registered deed of gift to his daughters of immoveable property On the same day the daughters executed a separate document stating that the property had been given to them and agreeing that if the donor required the property for any reason ' we shall hand it over to you without any compensation and without any objection " The Court held that the agreement limited the right, title and interest of the donees but did not require registration because, though the property was worth Rs 2,000, yet the value of the interest so limited was less than Rs 100 This decision is open to criticism If the agreement limited the interest by rendering the gift revocable it must have had the effect of

(*k*) *Atmaram* v *Vaman* (1925) 49 Bom 388, 87 I C 490 ('25) A.B 210, overruling *Subba Rama* v *Venkatasubba* (1924) 48 Bom 435, 80 I C 477, ('24) A.B 434

(*l*) (1927) 54 I A. 89 50 Mad. 193, 100 I C 105 ('27) A. PC 42, *Venkatasubba* v *Subba Rama* (1928) 52 Bom 313, 108 I.C 367, ('28) A PC 86

(*m*) *Ramchandra* v *Anandibai* (1932) 34 Bom L.R 218, 137 I C 580, ('32) A.B. 188

S 17 (1) (a) rendering the gift revocable at the will of the donor and void If so it extinguished an interest worth Rs 2 000 and required registration But it is submitted that the agreement was a personal covenant not limiting the estate transferred by the gift but binding only on the donees personally and therefore did not require registration (*n*)

If a gift is of total value less than Rs 100 a deed revoking the gift does not require registration (*n*1)

Hiba bil iwaz —A *hiba b l iwaz* as distinguished from *hiba* or simple gift is a gift for a consideration It has been held by the High Court of Calcutta that a *hiba bil iwaz* is a sale within the meaning of sec 54 of the Transfer of Property Act so that if the property is of the value of Rs 100 and upwards the transaction must be effected by a registered document and if it is of a value less than Rs 100 it must be effected by a registered document or by delivery of the property (*o*)

Gift in lieu of dower —A gift of property by a Mahomedan husband to his wife in lieu of dower is not a gift proper but a sale (*p*) A deed conferring on a Hindu wife in consideration of marriage a right of residence and maintenance out of the rents of a house falls under sec 17 (1) (b) and requires registration (*q*)

Unregistered deed of gift confirmed by donor's will —Where a deed of gift is not registered and is therefore inadmissible under sec 49 it does not become admissible because it is recited in and confirmed by the donor s will I am unable to see said Green J in *Raju Balu* v *Krishnarav* (*r*) how by his will a man can confirm a conveyance *as a conveyance* He may no doubt so refer in his will to an ineffectual or inoperative conveyance as to constitute *a devise of itself* but then the property passes by devise the conveyance so referred to does not acquire any greater force or effect *as a conveyance*

Gift of immoveable and moveable property —Where there is a gift of immoveable and moveable property but the former fails owing to want of registration the latter may nevertheless be good unless it is conditional on the validity of the former (*s*)

(*n*) Cf *Ma Yin Hu* v *Ma Chet May* (1929) 7 Rang 306 119 I C 737 (29) A.R 226 and *Jafri Begam* v *Syed Ali Raza* (1901) 28 I A. 111 23 All 383 (restraint of partition construed as a personal covenant binding only on the immediate parties)

(*n*1) *Mahomed Hasan Khan* v *Jang Bahadur Singh* (1931) 12 L R 105 (Rev)

(*o*) *Abbas Ali* v *Karim Baksh* (1908) 13 Cal W N 160 See also *Golam Mostofa* v *Goburdhone* (1881) 8 Cal L R 441 and *Solah* v *Keerun* (1871) 16 W R 175 176

(*p*) *Sah ba Begum* v *Atcham ia* (1868) 4 Mad. H C. 115 116 *Abbas Al* v *Karim Baksh* (1908) 13 Cal W N 160 See also *Bunyad* v *Muhammad* (1884) 5 All. W N 19 [mortgage to secure dower]

(*q*) *Bai Parsan* v *Lallubhai* (193) 34 Bom L R 457 138 I C 2 4 (3?) A.B 217

(*r*) (1878) 2 Bom 273 283 284

(*s*) *Perumal Ammal* v *Perumal* (1921) 44 Mad. 196 203 204 61 I C 461 (21) A. M. 137

Gift of mortgage debt—A gift of a debt secured by a mortgage of immoveable property in cases to which the Transfer of Property Act 1882 applies can only be made by a registered instrument as provided by sec 123 of the Act It is in effect a gift of immoveable property (t) But the Privy Council have held that there may be a transfer of the debt disassociated from the security (u) S 17 (1) (a), (b)

Memorandum of past gift—A document which on the face of it professes to be merely a memorandum of a gift made in the past does not require registration (v) See notes under sec 17 (1) (b) Recitals

Mahomedan gift—Sections 122 and 123 of the Transfer of Property Act 1882 do not affect any rule of Mahomedan law The essentials of a gift under the Mahomedan law are (1) declaration of gift by the donor (2) acceptance by the donee and (3) delivery of possession of the property to the donee A gift under that law is complete if the above formalities are complied with and no writing is required Where a Mahomedan makes a gift of immoveable property which is valid according to the Mahomedan law, the gift is none the less valid because the donor has executed a deed of gift purporting to convey the property to the donee which owing to want of registration is not admissible in evidence under sec 49 of the Act (w)

A mosque is recognised by the Mahomedan law as a juristic person and a valid gift can be made in favour of a mosque A deed of gift of immoveable property in favour of a mosque requires compulsory registration under cl (a) of this section and it cannot be received in evidence without registration nor can the terms of the instrument be proved by oral evidence (x)

SEC 17 (1) (b)—TRANSFERS, DECLARATIONS AND RELEASES

Immoveable property —See notes under sec 2 (6)

Non testamentary—A document which is plainly intended to be

(?1) A. M. 137

(t) Imperial Bank of India v Bengal National Bank (1931) 58 I A 3?3 35 Cal W N 1034 134 I C 6 1 (?31) A I C ?45

(v) Jaman v Chand ja Pam (1913) Punj Rec No 83 p ?97 at p 299 18 I C 918

(w) Nasib Ali v Munsh (19?6) 44 Cal L J 490 100 I C ?96 (?7) A C 197 See also Karam Ilahi v Sharf ud-din (1916) 38 All ?1? 35 I C 14

Moula Bux v Hafiz ud din (19?6) 8 Lah L J 156 94 I C 7 (?26) A L 37?

(x) Umrao Singh v Lachhman (1911) 33 All 344 355 38 I A 104 10 I C ?85 Rajanmal v Authanmal (1910) 33 Mad 304 7 I C 357 Trugnanapal v Ponnammna (19?0) ?5 C W N 511 58 I C ? ? (?1) A PC 89 Mot Singh v Mussammat (1916) Punj Rec No 8 p ?1 at p ?3 3? I C 5 Jat Mal v B l Jan (1916) Punj Rec No 35 p 100 at p 101 33 I C 948

S 17 (1) (a)

rendering the gift revocable at the will of the donor and void If so it extinguished an interest worth Rs 2 000 and required registration But it is submitted that the agreement was a personal covenant not limiting the estate transferred by the gift, but binding only on the donees personally and therefore did not require registration (*n*)

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(*q*) *Bai Parsan* v *Lallubhai* (1932) 34 Bom L R 457 138 I C 274 (32) A.B 217

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SEC. 17 (1) (b)—TRANSFERS, DECLARATIONS AND RELEASES

"Immoveable property"—See notes under sec 2 (6)

Non-testamentary—A document which is plainly intended to b operative immediately is non testamentary (*y*)

(*t*) *Perumal Ammal* v *Perumal* (1921) 44 Mad. 196 201 61 I C 461, (21) A. M. 137

(*u*) *Imperial Bank of India* v *Bengal National Bank* (1931) 58 I A. 323 35 Cal. W N 1034 134 I C 651 (31) A PC 245

(*v*) *Jaman* v *Chand ya Ram* (1913) Punj Rec No 83 p 297 at p 299 18 I C 918

(*w*) *Nasib Ali* v *Munshi* (1926) 44 Cal L.J 490 100 I.C 296, (27) A.C 137 See also *Karam Ilahi* v *Sharf ud-din* (1916) 38 All 212, 35 I C 14

(*x*) *Moula Bux* v *Hafiz ud din* (1926) Lah L J 156 94 I C 7, (26) A.I 372

(*y*) *Umrao Singh* v *Lachhman* (1911 33 All 344 355 38 I A 104 10 I C 285 *Rajammal* v *Authiammal* (1910) 33 Mad. 304 7 I C 357 *Tirugnanapal* v *Ponnammnai* (1920) 25 C W N 511 58 I C 228 (21) A PC 89, *Moti Singh* v *Mussamma* (1916) Punj Rec No 8 p 21, a p 23 32 I C 522, *Jat Mal* v *Beli Ram* (1916) Punj Rec No 35 p 100, at p 101 33 I C 948

S. 17 (1) (b)

Instruments.—See note, "Documents," on p 31 above

"Declare"—In *Sakharam* v *Madan* (z) West, J, said "There (in sec 17) 'declare' is placed along with 'create, 'limit' or 'extinguish' a 'right, title or interest' and these words imply a definite change of legal relation to the property by an expression of will embodied in the document referred to I think this is equally the case with the word 'declare' It implies a declaration of will, not a mere statement of a fact, and thus a deed of partition, which causes a change of legal relation to the property divided amongst all the parties to it, is a declaration in the intended sense; but a letter containing an admission, direct or inferential, that a partition once took place, does not declare a right within the meaning of the section" This statement of the law was approved by the Privy Council in *Bageshwari Charan* v *Jagarnath Kuari* (a) where their Lordships said "Though the word 'declare' might be given a wider meaning they are satisfied that the view originally taken by West, J, is right *The distinction is between a mere recital of a fact and something which in itself creates a title*' The word "declare" is therefore ejusdem generis with the words 'create", "assign" or "limit" with which it is in contiguity (b) Clause (b) does not comprise an acknowledgment, if it did cl (c) would be superfluous Neither does an acknowledgment of partition require registration under cl (c), for that clause is confined exclusively to acknowledgments in the form of a *receipt* (c)

"In future"—The words "in present or in future" were first inserted in Act 20 of 1866 The words "in future' have reference to estates in remainder or in reversion, or to estates otherwise deferred in enjoyment An agreement by *A* to pay to *B* half the produce of certain land and in default to pay a sum of money annually, does not create any rights in the future produce of the land in favour of *B* and does not require registration (*d*) It has been held by the Chief Court of the Punjab that if two persons agree to divide between them certain property in certain shares if they succeed in purchasing it, the agreement does not create any interest "in future"

(z) (1881) 5 Bom. 232, 236, followed in *Ranganayaki* v *Virupakshee* (1923) 45 Mad. L J 100, 72 I C 456, (23) A.M. 621 and in *Baldeo Singh* v *Udal Singh* (1921) 43 All 1, 58 I C 732 and approved in *Bhageshwari Charan* v *Jagarnath Kuari* (1932) 59 I A. 130, 11 Pat 272 136 I C 798 (32) A. PC 55, *Jiwan Ali* v *Basa Mal* (1886) 9 All 108, *Herambdev* v. *Kashinath* (1890) 14 Bom 472, *Chamanabu* v *Mulanchand* (1896) 20 Bom 562, *Komalgowda* v *Bhimaji* (1899) 23 Bom. 602, *Karam Singh* v *Msst Wanti* (1932) 140 I C 387, (32) A.L 592, *Radha Kishan* v *Hukamchand* (1932) 136 I C. 14, (32) A.L. 154

(a) (1932) 59 I A. 130, 137, 11 Pat 272, 136 I.C. 798, (32) A P.C. 55

(b) *S P K R R M Chettyar Firm* v *Administrator General of Bengal* (1933) 11 Rang 481, (33) A.R 307 *Saraswati* v *Srinivasa* (34) A. M. 735

(c) *Sakharam* v *Madan* (1881) 5 Bom 232, 237

(d) *Wali* v *Khuda Bakhsh* (1923) 5 Lah. L J 366, 72 I C 480 (24) A. L. 149

within the meaning of cl (b), and does not require registration (e). Similarly, it has been held by the same Court that a writing which confers upon a person a right which comes into existence if certain conditions are fulfilled by him, does not require registration (f) The first of these two cases was followed by the High Court of Lahore in a case where the document recited that a contract had been entered into between the parties thereto, and that *in the event of* certain happenings certain rights would accrue in favour of certain persons, it was held that the document did not require registration (g) It is difficult to reconcile these decisions with the Privy Council ruling in *Hemanta Kumari* v *Midnapur Zamindari Company* (h) One of the questions in that case was whether a writing by which one of the parties agreed that if he succeeded in another suit which he had brought to recover certain land, he would grant to the other a lease of that land upon specified terms, required registration Their Lordships of the Privy Council held that the document did not require registration under cl (d) of this section, as it was neither a lease nor an agreement to lease, but that it purported to create a *contingent* right or interest in immoveable property and required registration under cl (b) In a case in which one of two mortgagees purchased the property mortgaged at an execution sale in realization of the mortgage, and it was alleged that the other mortgagee had released his right to a share of the property purchased, the Allahabad High Court observed that if the relinquishment had been by a written instrument, the instrument would have been compulsorily registrable (i) It will be observed that the release was an interest contingent on payment of his share of the expenses incurred by the mortgagee purchaser S. 17 (1) (b)

Limit.—The right to hold a market is an incident of the ownership of land (j) An agreement limiting this right to particular days requires registration (k)

"Vested."—See definition of "vested interest" in sec 19 of the Transfer of Property Act, 1882

"Contingent."—See definition of "contingent interest" in sec. 21 of the Transfer of Property Act, 1882 See also note "In future," on p 36 above

Test of value for registration.—When it is necessary to determine whether an instrument, other than a deed of gift, purports or operates to

(e) *Bhan Singh* v *Thakar Das* (1908) Punj Rec No 89, p 419

(f) *Sansar Singh* v *Tiloka* (1898) Punj Rec No 51, p 170, at p 175, *Imam Bakhsh* v *Karim* (1895) Punj Rec No 16

(g) *Ram Das* v *Nadir Shah* (1919) 1 Lah L. J 79, 69 I C 608

(h) (1919) 46 I A. 240, 249, 47 Cal 485, 498, 53 I C. 534

(i) *Lal Singh* v. *Choley Beti* (1934) 34 All L. J 107, ('33) A. A. 854.

(j) *Hem Chandra* v. *Krishna Chandra* (1920) 47 Cal 1079, 38 I C 879

(k) *Ganesh Singh* v *Sitla Baksh* (1930) 5 Luck. 504, 131 I. C. 65, ('31) A. O. 110.

S. 17 (1) (b) create an interest of the value of Rs 100 or upwards in immoveable property within the meaning of cl (b), the test of value is the consideration stated in the instrument (*l*) Thus in the case of a sale, the price mentioned in the deed must be regarded as showing the value of the land conveyed, and not the actual value thereof (*m*) Similarly in the case of a mortgage, it is the principal money secured by the mortgage that determines the value for registration, and not the principal money *plus* the interest that may accrue due (*n*) In cases to which the Transfer of Property Act, 1882, applies, there is no room for doubt on this point, for the test of value for the registration of a mortgage deed is "the principal money secured," which excludes all interest see sec 59 of that Act But when property is mortgaged to secure loans to be *hereafter* made not exceeding Rs 100, and the sums actually advanced exceed Rs 100, the document is compulsorily registrable (*o*)

A deed conferring on a Hindu wife, in consideration of marriage, a life interest in a house producing a rent of Rs 99 a year creates an interest of value exceeding Rs 100 and requires registration (*p*) In a Bombay case (*q*) an agreement rendering a gift of immoveable property worth Rs 2,000 revocable was held to make the property worth less than Rs 100 and not to require registration But the reasoning in this case is open to criticism See "Revocation of gift" at p 33

There is a conflict of opinion as to the test of value for registration in the case of an assignment of a mortgage It has been held by the High Courts of Bombay and Madras that when a mortgagee transfers his interest in the mortgage to another, it is the consideration paid by the transferee that determines the value for registration, and not the actual amount due from the mortgagor to the mortgagee under the mortgage at the date of assignment Thus according to these Courts a deed of transfer for a consideration of less than Rs 100 of a mortgage for upwards of Rs 100 does not require

(*l*) *Nana* v *Anant* (1878) 2 Bom 353, 354

(*m*) *Rohinee* v *Shib Chunder* (1871) 15 W R 558, *Vasudev* v *Rama Babaji* (1872) 11 Bom H C 149 *Satra* v *Visram* (1878) 2 Bom 97, *Nana* v *Anant* (1878) 2 Bom 353, 355

(*n*) *Nana* v *Anant* (1878) 2 Bom 353, *Ram Doolary* v *Thacoor* (1878) 4 Cal. 61, *Panchi Dasi* v *Ahmed ulla* (1883) 12 Cal L R 444, *Habib ullah* v *Nakched Rai* (1883) 5 All. 447 [F B], *Jodh Ram* v *Lajja Ram* (1913) 11 All L.J 729, 21 I C 78, *Kunhi Amma* v *Ahmed* (1900) 23 Mad. 10, *Sadagopa* v *Dorasami* (1882) 5 Mad. 214, *Jhanda* v *Jouaya* (1880) Punj Rec No 29, p 67, *Jagappa* v *Latchappa* (1882) 5 Mad. 119 and *Tiyadgaraja* v. *Ramanujam* (1883) 6 Mad. 422 do not seem to be good law

(*o*) *Perrin* v *Ledlie* (1870) 15 W R 364

(*p*) *Bai Parsan* v *Lallubhai* (1932) 34 Bom L R 459, 138 I C 274, ('32) A B 217

(*q*) *Ramchandra* v *Anandibai* (1932) 34 Bom L R 218, 137 I C. 580, ('32) A B 188

registration under this Act (r) A different view has been taken by the Chief Court of the Punjab According to that Court it is the amount of the debt transferred that determines the value of the interest transferred and not the consideration for which the debt is transferred, with the result that an assignment of a mortgage for Rs 250 for a consideration of Rs 90 must be registered under this clause (s), This view, it is submitted, is not correct **S. 17 (1) (b)**

In a Bombay case where a mortgagee assigned his mortgage to another in consideration of Rs 5 paid to him by the latter and in consideration of the assignee withdrawing a suit he had instituted against the assignor, the Court held upon the contents of the document that the money value of the latter part of the consideration was the amount covered by the stamp on the document and that as it exceeded Rs 100, the document required registration (t)

Mortgage

Mortgage —A mortgage did not require to be in writing until the passing of the Transfer of Property Act 1882 Sec 59 of that Act provides that where the principal sum secured is Rs 100 or upwards a mortgage (other than a mortgage by deposit of title deeds) can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses Where the principal sum secured is less than Rs 100 a mortgage can be effected either by a registered instrument signed and attested as aforesaid or (except in the case of a simple mortgage) by delivery of the property Sec 4 of that Act provides that sec 59 is to be read as supplemental to the Indian Registration Act see as to this the note under sec 49 By any provision of the Transfer of Property Act at p 172

Test of value for registration —See notes under the same head on p 37 above

Whether a transaction amounts to a mortgage by conditional sale or to a sale with a right of re-purchase —The question whether two documents executed between the same parties amount to a mortgage by conditional sale or to a sale with a right of re purchase is one of great importance in connection with the question of registration These documents are of frequent occurrence in India The question raised by them has usually been defined to be whether the two documents evidence a single transaction of mortgage by conditional sale or whether the second document evidences an agreement to reconvey separable from the first sale or sale deed

(r) *Satra* v *Visram* (1878) 2 Bom 97 *Subramaniam* v *Perumal* (1895) 18 Mad. 454

(s) *Ram Sarup* v *Mubarak* (1900) Punj Rec No 1 p 1

(t) *Nago Kanaturia* v *Babaji* (1884) 8 Bom 610

S. 17 (1) (b) And the answer depends upon the intention of the parties, as expressed in the language of the documents themselves in the light of the surrounding circumstances (*u*)

In *Harkisondas* v *Bai Dhanu* (*v*) the following questions were referred to a Full Bench —

Whether when a registered deed of sale (A) of immoveable property worth Rs 100 or over is passed, and as a part of the same transaction, and not as an independent transaction, the vendee executes an unregistered agreement (B) to reconvey the property on payment of a certain sum of money, the document (B) is inadmissible in evidence for want of registration under sec 17 (1) (b) and sec 49 of the Indian Registration Act, either

(a) where the transaction constitutes a mortgage, or

(b) where it is a bona fide sale with a contract for re purchase

It was held by the Full Bench answering question (a) that where the transaction constituted a mortgage, the agreement to reconvey was inadmissible in evidence for want of registration As to question (b) it was held by Shah and Coyajee, JJ, that where the transaction was a bona fide sale, the agreement for re-purchase came within sec 17 (2) (v) and did not require registration Macleod, C J, however, refused to answer the question stating that it was not capable of being answered by a direct affirmative or negative In the course of his judgment the learned Chief Justice said "The difficulty, I find in answering the second question, lies in the fact that it is not what I consider a fair question capable of being answered by a direct affirmative or negative It involves the fallacy that where two parties agree upon a particular course of conduct between themselves with regard to a dealing in immoveable property, their resultant action necessarily forms one transaction whereas there may be several transactions all dependent on each other and arising out of one previous arrangement between the parties If two parties agree beforehand that one party shall sell immoveable property to the other and that the purchaser shall agree to resell the property at a price to be tendered by the vendor within a certain time, the latter agreement to be contained in a separate document, when the relative documents are executed, they evidence not one transaction but two transactions The sale passes the title absolutely to the purchaser, the agreement to resell in no way limits his right as owner When the parties intend to create a mortgage the situation is different The ostensible vendor does not lose all interest in the property, he retains for himself a transferable and hereditable right, so that the sale deed and the agreement to reconvey do evidence a single and inseparable transaction Consequently, I do not find it possible to answer the

(*u*) *Balkishen Das* v *Legge* (1900) 27 I A. 58, *Narsingerji* v *Panuganti* (1924) 51 I A 305, 47 Mad. 729, 82 I C 993 (24) A.PC 226

(*v*) (1926) 50 Bom 566, 98 I C 634, (26) A B 497, *Fakirji* v *Bhagvatlal* (1929) 31 Bom L R 493, 119 I C 793 (29) A B 290

several questions by a direct affirmative or negative The intention of the parties must be proved by the Court according to the facts of each case, and ordinarily speaking I should say that when the agreement to sell is evidenced by a separate document that would be proof that, although the parties had come to a previous arrangement with regard to a particular course of conduct between themselves there was an intention to give effect to that arrangement by entering into two transactions ' **S. 17 (1) (b)**

The High Court of Madras has also held that where the transaction constitutes a mortgage the agreement to reconvey must be registered (*w*) Both in Bengal (*x*) and Allahabad (*y*) it has been held that where *A* sells property to *B* by a registered sale deed and *B* agrees on the same day by an unregistered deed to retransfer the property to *A*, the latter document requires registration In a recent Allahabad case the Court held that where the first transaction is an absolute sale, the agreement for repurchase falls within sec 17 (2) (v) and does not require registration (*z*) The High Court of Madras has taken a similar view (*z1*) The opinion expressed by Macleod C J in *Harkisondas* v *Bai Dhanu* (*a*) that separate documents ordinarily indicate separate transactions is confirmed by the proviso added to the definition of a mortgage by conditional sale in sec 58 (c) of the Transfer of Property Act by the amending Act 20 of 1929 Under that proviso no condition of reconveyance shall be deemed to be a mortgage unless embodied in the document which effects or purports to effect the sale If it is embodied in the document which purports to be a deed of sale it would of course be registered along with the sale deed

Charge —Documents creating a charge (*a1*) or an equitable charge on immoveable property of the value of Rs 100 or upwards, require registration under this section (*b*) This is because sec 17 (1) (b) applies to rights, not only *in* but *to* immoveable property (*c*)

(*w*) *Mutha* v *Pyanda* (1904) 27 Mad 348 *Achutaramaraju* v *Subraraju* (1902) 25 Mad 7 *Pylah* v *Mutha* (1914) 26 Mad. L J 151, 23 I C 409

(*x*) *Sheikh Parabdi* v *Sheikh Mohamed* (1868) 1 Beng L R A C 37 41

(*y*) *Suraj Pershad* v *Phul Singh* (1906) 26 All W N 180

(*z*) *Gobardhan* v *Raghabir Singh* (1930) 28 All L. J 799 124 I C 425, ('30) A A 101

(*z1*) *Chinnakkal* v *Chinnathambi* (1934) 67 Mad L J 635

(*a*) (1926) 50 Bom 560, 98 I C 634 ('26) A B 497

(*a1*) *Rangampalli* v *Venkateswarlu* ('34) A M 713

(*b*) *The Bengal Banking Corporation* v *Mackertich* (1884) 10 Cal 315, 322 *Bai Narmada* v *Bhagwantrai* (1888) 12 Bom 505 *Khoo Sain Bah* v *Tan Guat Tean* (1929) 7 Rang 234 117 I C 489 ('29) A.PC 141, *Maung Po Kyi* v *Noor Mahomed* (1933) 147 I C 562 ('33) A. R 259 *Kesho Prasad* v *Upper India Bank Ltd* (1933) 141 I C 474 ('33) A. O 76, *Ghanshyam Das* v *Jainarain* (1934) 148 I C 417, ('34) A.A. 444, *Jainarain Singh* v *Parmeshwar Murao* (1931) 132 I C 798 ('31) A O 310

(*c*) *Imperial Bank of India* v *Bengal National Bank* (1931) 58 Cal 136 131 I C 689 ('31) A. C 223 reversed on another point in 58 I A. 323 134 I C 651, ('31) A PC 245

S 17 (1) (b)

Assignment of statutory lien under sec 55 of Transfer of Property Act—In a Madras case (*d*) a document was executed mentioning facts which gave the vendor a statutory charge under sec 55 (4) (b) of the Transfer of Property Act 1882 The vendor assigned his rights under that document by another document which was not registered It was held in a suit to enforce the charge that the latter document required registration The Court applied the principle underlying *Dayal Singh* s case (*e*) namely that a document which creates a statutory charge requires registration It should be noted that *Dayal Singh* s case has been superseded by legislation only to the extent mentioned in the explanation to sec 17(2)

Mortgage by deposit of title deeds—Secs 58 (f) and 59 of the Transfer of Property Act, 1882 provide that a mortgage may be made in Calcutta, Madras Bombay and the other places mentioned therein by mere delivery by the debtor to the creditor of title deeds of the debtor s immove able property with intent to create a security Such a mortgage does not require to be effected by a registered instrument (*f*) The same rule applies to a sub mortgage by deposit of title deeds Thus if *A* mortgages his property to *B* by a registered instrument, and *B* then deposits the title deeds of *A* s property with *C* to secure a loan from *C* to *B*, the sub mortgage need not be effected by a registered instrument (*f*) Outside those places a mortgage by deposit of title-deeds can only be made if the property is of the value of Rs 100 or upwards, by a registered instrument If the instrument is not registered it is ineffectual to create a mortgage (*g*) See note, " Assign ment of mortgage on p 46 below

A mortgage by deposit of title-deeds does not require any writing but it is usual for the mortgage to be accompanied by a memorandum in writing In such cases the question often arises whether the writing requires registra tion If the writing *itself* constitutes the bargain or contract between the parties and creates a mortgage on the property it must be registered under the Registration Act (*h*) But if the mortgage was completed by the deposit

(*d*) *Rajagopala* v *Ranganatha* ('34) A M 615 affirming *Ranganatha* v *Rajagopala* (1933) 142 I C 730 ('33) A M 181 [*Sambasiva* v *Venkatarama* (1926) 51 Mad L J 95 95 I C 447 ('26) A M 903 not followed]

(*e*) *Dayal Singh* v *Indar Singh* (1926) 53 I A 214 98 I C 508 ('26) A PC 94

(*f*) *Gokul Dass* v *Eastern Mortgage and Agency Co* (1906) 33 Cal 410 421 422

(*g*) *Konchadi* v *Shiva Rao* (1905) 28 Mad 54

(*h*) *Pranjivandas Mehta* v *Chan Ma Phee* (1916) 43 I A 122 43 Cal 895 35 I C 190 *Subramonian* v *Lutchman* (1923) 50 I A 77 1 Pang 66 71 I C 650 ('23) A PC 50 *Dwarkanath* v *S M Sarat* (1870) 7 Beng L R 55 *Behram* v *Sorabji* (1914) 38 Bom 372 375 23 I C 140 *Chunilal* v *Vithaldas* (1922) 24 Bom L R 502 68 I C 1005 ('22) A B 440 *Swamichetty* v *Ethirajulu* (1917) 40 Mad 547 34 I C 853 *Jagannadhan* v *Official Assignee* (1931) 60 Mad L J 309 123 I C 814 ('31) A M 124 *National Bank of India* v *R C Nazir & Co* (1932) 34 Bom L R 748 139 I C 745 ('32) A B 401 *Shailendranath Palit* v *Hade Kana Mane* (1932) 59 Cal 586 137 I C 500 ('32) A C 356 *Bank of Northern India* v *Narain Singh* (1932) 138 I C 247 *Jaimal Singh* v *Peoples Bank of Northern India* (1933) 141 I C 541 ('33) A Pesh 35

of title-deeds and the advance of money on such deposit, and the writing is merely a record of an already completed transaction the writing does not require registration (i) The question in each case is did the document constitute a bargain between the parties or was it merely the record of an already completed transaction? The leading Privy Council case on the subject is *Pranjivan das Mehta v Chan Ma Phee* (j) In that case the law on the subject was laid down as follows —

(1) Where title deeds of property are handed over with nothing said except that they are to be security the law supposes that the scope of the security is the scope of the title

(2) Where, however title deeds are handed over accompanied by a bargain that bargain must rule

(3) Lastly when the bargain is a written bargain it and it alone must determine what is the sope and the extent of the security In the words of Lord Cairns in the leading case of *Shaw v Foster* (1872) L R 5 H L 321 340 Although it is a well established rule of equity that a deposit of a document of title without more without writing or without word of mouth will create in equity a charge upon the property referred to I apprehend that that general rule will not apply where you have a deposit accompanied by an actual written charge In that case you must refer to the terms of the written document and any implication that might be raised supposing there were no document, is put out of the case and reduced to silence by the document by which alone you must be governed '

In *Pranjivandas Mehta's* case it was held that when documents of title to immoveable property have been deposited as security for a debt and a

(i) *Kedarnath Dutt v Shamloll Khettry* (1873) 11 Beng L R 405 *Jadha v Haji Abdul* (1886) 10 Bom 634 647 648 *Oo Koung v Moung* (1886) 13 Cal 322 *Gokul Dass v Eastern Mortgage and Agency Co* (1906) 33 Cal 410 *Bhairav v Anath Nath* (1920) 24 Cal W N 599 57 I C 686, *Umrao Singh v Punjab National Bank* (1921) 3 Lah L J 44 59 I C 578 ('21) A L 274, *Moti ram v Bharat National Bank* (1921) 3 Lah L J 373 67 I C 421 ('21) A L 253 *Kshetra Nath v Harasukhdas* (1927) 45 Cal L J 233 103 I C 871 ('27) A C 538 *Ramakrishna v Balakrishna* (1927) 53 Mad L J 179 102 I C 34 ('27) A M 1145 *Obla Sundacharnar v Narayana Ayyar* (1931) 58 I A 68 54 Mad. 257, 131 I C 328 ('31) A PC 36, *S P K R R M Chettyar Firm v The Administrator General of Bengal* (1933) 11 Rang 481 ('33) A R 307 *Villa v Petley* (1934) 148 I C 721 ('34) A R 51 *Tyeballi v Parpatibai* (1932) 139 I C 95 ('32) A S 73

(j) (1916) 43 I A 122 43 Cal 895 35 I C 190

S. 17 (1) (b) memorandum is subsequently signed by the parties stating that a part only of the property is security for the debt, the memorandum is conclusive evidence that the charge in favour of the creditor extends only to that part of the property

The above decision was followed by their Lordships in *Subramonian* v *Lutchman* (*k*), where it was held that when upon a mortgage by deposit of title deeds a document is drawn up *constituting the bargain* between the parties, the document is not admissible in evidence to prove the mortgage, unless it is registered under the Registration Act, and oral proof of the mortgage is inadmissible

Oral evidence to explain deposit—The question whether oral evidence is admissible to explain a deposit of title deeds depends on whether the writing itself constituted the contract between the parties or whether it was merely a record of a deposit already made pursuant to a previous agreement between the parties In the former case no oral evidence is admissible , in the latter case it is admissible The law on the subject was thus stated by Couch, C J , in *Kedarnath Dutt* v *Shamloll Khettry* (*l*) ' The rule with regard to writings is that oral proof cannot be substituted for the written evidence of any contract which the parties have put into writing And the reason is that the writing is tacitly considered by the parties themselves as the only repository and the appropriate evidence of their agreement If this memo randum was of such a nature that it could be treated as a contract for the mortgage and what the parties considered to be the only repository and appro priate evidence of their agreement, it would be the instrument by which the equitable mortgage was created, and would come within sec 17 of the Registration Act "

Illustrations.

(a) *A* sends the title deeds of his property to *B* with a letter stating that the deeds are to be held as security for an antecedent debt The letter must be registered *Dwarkanath* v *S M Sarat* (1870) 7 Beng L R 55 , *Bhairaw* v *Anath Nath* (1920) 24 Cal W N 599, 57 I C 686

(b) *A* borrows Rs 2 000 from *B*, and passes a promissory note to *B* for that sum At the same time *A* deposits with *B* the title deeds of his property as security for the loan *After* the deposit is made *A* sends a letter to *B* in these terms ' As collateral security for payment of Rs 2 000 secured by a promissory note, I herewith hand you the title deeds of my property The letter does not require

(*k*) (1923) 50 I A. 77, 1 Rang 66 71 I C. 650 (23) A PC 50

(*l*) (1873) 11 Beng L R 405 approved in *Subramonian* v *Lutchman* (1923) 50 I A 77 82 1 Rang 66 71 I. C 650 (23) A PC 50

registration The mortgage was created by the deposit of the deeds, and not by the letter *Oo Noung* v *Moung* (1886) 13 Cal 322 **S. 17 (1) (b)**

In a Bombay case (*m*), *D* as surety for *S* agreed to deposit title deeds with *P* in order to secure advances to be made by *P* to *S* In pursuance of this agreement *D* wrote to *P* as follows We have instructed our solicitors to make over the title deeds of our property at Dadar Matunga Estate, Bombay, plot No 21, value Rs 10,000 to be held by you as security against advances you may make to Sarda & Sons, Calcutta At the time this letter was written *D* had no interest in the property described, but had only a contractual right to obtain a lease of it from the Improvement Trust The lease was granted to *D* a year later and was then deposited with *P* On these facts Mirza, J, held, it is submitted correctly, that the letter embodied the contract of mortgage and required registration The Chief Justice however held that the letter did not require registration as the lease was not then in existence and that the letter operated only as an agreement to create a mortgage when the property should be acquired It is submitted that this is incorrect, for under sec 17 (1) (b) the letter *purported* to create a mortgage over property of the value of Rs 10,000 No doubt if the property was not in existence no mortgage was created at the time of the letter, but registration is not of the transaction but of the document The criterion for registration is what appears on the face of the document (*n*) The Chief Justice further held that apart from the letter there was evidence to connect the deposit with the advances But if the letter embodied the contract oral evidence could not be led under sec 91, Indian Evidence Act, and the law as explained in *Kedarnath Dutt* v *Shamloll Khettry* (*o*)

Variation of mortgage by subsequent writing.—An agreement by which a mortgagor agrees to pay interest at a rate higher than that fixed by the mortgage-deed, which itself is registered, requires registration If it is not registered, it cannot fetter the equity of redemption in the property and the mortgagor is entitled to redeem on payment of principal and interest at the rate stipulated in the mortgage deed (*p*) Similarly an agreement by which the period of redemption fixed by the mortgage deed is reduced requires registration If it is not registered, the mortgagor is not entitled to redeem earlier than the date fixed for redemption in the mortgage deed (*q*) An agreement to accept a smaller amount than what is due under a registered

(*m*) *Jagjivandas Jethalal* v *King Hamilton & Co* (1931) 55 Bom 677, 134 I C 545, (31) A B 337

(*n*) *Ramaswamy* v *Thirupathi* (1904) 27 Mad 43 45

(*o*) (1873) 11 Beng L R 405

(*p*) *Tika Ram* v *The Deputy Commissioner of Bara Banki* (1898) 26 Cal. 707, 26 I A 97

(*q*) *Sadar ud-din* v *Chajju* (1909) 31 All. 13, 16 1 I C 558, *Deo Narain* v *Bhola Singh* (1930) 28 All. L J 1163, 126 I.C. 8 (30) A A 506

S. 17 (1) (b) memorandum is subsequently signed by the parties stating that a part only of the property is security for the debt, the memorandum is conclusive evidence that the charge in favour of the creditor extends only to that part of the property

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(*k*) (1923) 50 I A. 77, 1 Rang 66 71 I C. 600 (23) A PC 50

(*l*) (1873) 11 Beng L. R 405 approved in *Subramonian* v *Lutchman* (1923) 50 I A 77, 87, 1 Rang 66 71 I C 600 (23) A.PC 50

registration The mortgage was created by the deposit of the deeds, and not by the letter *On Young v Moung* (1886) 13 Cal 322 **S. 17 (1) (b)**

In a Bombay case (*m*) *D* as surety for *S* agreed to deposit title deeds with *P* in order to secure advances to be made by *P* to *S* In pursuance of this agreement *D* wrote to *P* as follows We have instructed our solicitors to make over the title deeds of our property at Dadar Matunga Estate, Bombay, plot No 21, value Rs 10 000 to be held by you as security against advances you may make to Sarda & Sons, Calcutta At the time this letter was written *D* had no interest in the property described, but had only a contractual right to obtain a lease of it from the Improvement Trust The lease was granted to *D* a year later and was then deposited with *P* On these facts Mirza, J, held it is submitted correctly that the letter embodied the contract of mortgage and required registration The Chief Justice however held that the letter did not require registration as the lease was not then in existence and that the letter operated only as an agreement to create a mortgage when the property should be acquired It is submitted that this is incorrect for under sec 17 (1) (b) the letter *purported* to create a mortgage over property of the value of Rs 10 000 No doubt if the property was not in existence no mortgage was created at the time of the letter, but registration is not of the transaction but of the document The criterion for registration is what appears on the face of the document (*n*) The Chief Justice further held that apart from the letter there was evidence to connect the deposit with the advances But if the letter embodied the contract oral evidence could not be led under sec 91, Indian Evidence Act, and the law as explained in *Kedarnath Dutt v Shamloll Khettry* (*o*)

Variation of mortgage by subsequent writing—An agreement by which a mortgagor agrees to pay interest at a rate higher than that fixed by the mortgage-deed, which itself is registered, requires registration If it is not registered, it cannot fetter the equity of redemption in the property and the mortgagor is entitled to redeem on payment of principal and interest at the rate stipulated in the mortgage deed (*p*) Similarly an agreement by which the period of redemption fixed by the mortgage deed is reduced requires registration If it is not registered, the mortgagor is not entitled to redeem earlier than the date fixed for redemption in the mortgage deed (*q*) An agreement to accept a smaller amount than what is due under a registered

(*m*) *Jagjivandas Jethalal* v *King Hamilton & Co* (1931) 55 Bom 677, 134 I C 545, (31) A B 337

(*n*) *Ramaswamy* v *Thirupathi* (1904) 27 Mad 43 45

(*o*) (1873) 11 B ng L R 405

(*p*) *Tika Ram* v *The Deputy Commissioner of Bara Banki* (1898) 26 Cal 707, 26 I A 97

(*q*) *Sadar ud-din* v *Chajju* (1909) 31 All 13 16, 1 I C 5o8, *Deo Narain* v *Bhola Singh* (1930) 28 All L J 1163, 126 I C 8, (30) A A 506

S 17 1) (b)

mortgage deed also requires registration (*r*) Similarly an agreement which reduces the rate of interest on a mortgage (*s*) or which sets out the mode in which the rents and profits of land are to be dealt with at variance with the stipulations contained in a deed of usufructuary mortgage requires registration (*t*)

If plaintiffs sue for contribution as persons who owning one property subject with the property of other persons to a common mortgage, have paid off the mortgage it is necessary for them to prove the mortgage But if they admit that the deed of mortgage has been modified by a subsequent verbal arrangement they can neither prove the verbal arrangement nor can they succeed on the footing that the transaction is governed by the mortgage deed alone (*u*)

Assignment of mortgage—Under the Transfer of Property Act as originally passed mortgage debts were assignable as actionable claims and the assignment of the debt passed the security with it under sec 8 of the Act (*v*) The Act however was amended in 1900 by substituting a new Chapter (Chapter VIII) on Actionable Claims and inserting in sec 3 a definition of actionable claim which excludes debts secured by mortgage of immoveable property or by hypothecation or pledge of moveable property The effect of this amendment is that mortgage debts can no longer be transferred as actionable claims under Chapter VIII of that Act They can only be transferred by way of sale under sec 54 or by way of exchange under sec 118 or by way of gift under sec 123 but in all cases as immoveable property and consequently only by a registered instrument (*w*) This is so even if the mortgage be one made by deposit of title deeds *A* borrows Rs 1 000 from *B* and deposits with him the title deeds of his property with intent to create a security on the property without executing any writing [Transfer of Property Act 1882 secs 58 (f) and 59] If *B* wants to transfer the mortgage to *C* it can only be done in cases to which the Transfer of Property Act applies by a registered writing [see sec 54 of that Act] (*x*) A registered

(*r*) *Vegnanarayana v Suppal* (1927) 52 Mad L J 274 100 I C. 54 (27) A M 1111

(*s*) *Afsar Jahan Begam v Beche Lal* (1932) 7 Luck 16 139 I C 66 (31) A O 286

(*t*) *Abdullah Khan v Basharat Husain* (1913) 40 I A 31 35 All 48 55 17 I C 737

(*u*) *Kamta Singh v Chaturbhuj Singh* (1934) 59 Cal. L J 577 148 I C 486 (34) A PC 98

(*v*) *Subramaniam v Perumal* (1895) 18 Mad 454 *Perumal Ammal v Perumal* (1921) 44 Mad 196 200 61 I.C 461 (21) A.M. 137 *Salkhuddin v Sonaullah* (1917) 21 Cal. W N 641 644 645 45 I C 986

(*w*) *Perumal Ammal v Perumal* (1921) 44 Mad 196 200 201 61 I C. 461 (21) A M. 137 *Official Receiver v Lakshman* (1921) 41 Mad L J 4531 68 I C 759 (21) A M. 681 *Bank of Upper India Limited v Fanny Skinner* (1929) 51 All 494 119 I.C 241 (29) A A 161

(*x*) *Elumalai v Balakrishna* (1921) 44 Mad. 965 969 66 I.C 168 (22) A M. 344.

writing is necessary to effectuate the transfer even if *B* has taken a promissory note for Rs 1,000 from *A* and the note is endorsed by him to *C*. The transfer of the debt by endorsement of the note does not carry with it a transfer of the security. The reason is that what is transferred is a mortgage debt, and the provisions of sec 8 of the Transfer of Property Act do not apply to a mortgage-debt (*y*). But in the case of *Imperial Bank of India v Bengal National* (*z*) the Privy Council held that the debt might be disassociated from the security so that an unregistered transfer of a mortgage debt may be treated as a transfer of the debt divorced from the security. This decision was followed in a Madras case (*a*) on the following facts: *A* and *B* were joint mortgagees but *B* surrendered his share to *A*. The surrender being unregistered was inadmissible in evidence as an assignment of the mortgage and therefore a decree for the recovery of the mortgage debt was passed in favour of both *A* and *B*. But after the debt was realized by sale the unregistered surrender was treated as evidence of the release of *B*'s share of the debt and the whole of the sale proceeds were paid to *A* alone. S. 17 (1) (b)

Sale of equity of redemption to mortgagee.—*A* mortgages his property to *B* to secure payment of Rs 400. *A* then sells his equity of redemption to *B* for Rs 99-8-0. A Full Bench of the Chief Court of the Punjab has held that the document does not require registration (*b*). The Calcutta High Court has held that it does (*c*).

Assignment of mortgage decree.—It has been held by the High Court of Bombay that an assignment of a mortgage decree for Rs 100 or upwards requires registration under this clause, the reason given being that the assignment gives the assignee the right to sell the immoveable property covered by the decree and the right to sell an immoveable property is a right to or interest in such property (*d*). That Court has also held that the assignee, if the assignment is not registered, cannot execute even that part of the decree which reserves liberty to the mortgagee to proceed against the person or other property of the mortgagor in the event of the net sale proceeds of the mortgaged property being insufficient to pay the mortgagee's claim in full (*e*). On the other hand, it has been held by the High Courts of

(*y*) *Elumalai v Balakrishna* (1921) 44 Mad 965, 66 I C 168, ('22) A M 344 dissenting from *Perumal Ammal v Perumal* (1921) 44 Mad 196, 61 I C 461, ('21) A M 137 where it was held that s 8 of the Transfer of Property Act applied. But *Perumal v Perumal* was followed in *Villa v Petley* (1934) 148 I C 721, ('34) A R 51

(*z*) (1931) 58 I A 323, 35 Cal W N 1034, 134 I C 65, ('31) A PC 245

(*a*) *Lakshmana Naicker v Jayaram Naicker* (1934) 66 Mad L J 380, 150 I C 18, ('34) A M 178

(*b*) *Pir Bakhsh v Mangal* (1892) Punj Rec No 16 p 77

(*c*) *Barsik Nandi v Gurudas Pal* (1927) 46 Cal L J 573, 107 I C 474, ('28) A C 107

(*d*) *Gopal v Trimbak* (1876) 1 Bom 267

(*e*) *Heptulla v Mahomed* (1909) 11 Bom L R 356, 2 I C 511.

S. 17 (1) (b)

Calcutta (*f*) and Allahabad (*g*), that such an assignment does not require registration, the reason given being that the assignment is not of any interest in the immoveable property, but of the decree itself, and the decree, though it be a decree upon a mortgage bond, can in no sense be regarded as immoveable property, and further that the assignment does not *of itself create* an interest in immoveable property. The correct view, it is submitted, is the one taken by the High Courts of Calcutta and Allahabad. The Madras High Court has followed the Allahabad decision, but the case was one in which it did not appear on the face of the assignment that the decree was a mortgage decree (*h*).

Splitting of mortgage to avoid registration.—*A* lends Rs. 198 to *B*, and, to avoid registration, takes two mortgage bonds from *B* each for Rs. 99 instead of one bond for Rs. 198. Neither bond requires registration. There is nothing in the Registration Act which forbids the splitting up of a transaction in this manner (*i*).

Re-transfer by mortgagee.—A reconveyance of land by a mortgagee to the mortgagor requires registration, if the consideration is Rs. 100 or upwards (*j*).

Merger.—A creditor holding a mortgage on the lands of his debtor does not necessarily surrender that mortgage by taking a subsequent mortgage of the same property for the same debt. Where, therefore, the later mortgage deed is inadmissible in evidence for want of registration, but the facts show that the mortgagee did not intend to surrender the security given by the earlier mortgage deed, there is no merger, and the mortgagee can fall back upon the latter document, if admissible in evidence (*k*).

Rajinamas and kabuliyats governed by the Bombay Land Revenue Act 5 of 1879.—Rajinamas and kabuliyats executed between (to use somewhat loose language) a mortgagor and his mortgagee in cases governed by the Bombay Land Revenue Code do not require registration. They are not in themselves documents of transfer, though

(*f*) *Gous* v. *Khawas* (1896) 23 Cal. 450, *Baij Nath* v. *Binoyendra* (1901) 6 Cal. W. N. 5, *Ram Ratan* v. *Jogesh Chandra* (1907) 12 Cal. W. N. 625.

(*g*) *Abdul Majid* v. *Muhammad* (1890) 13 All. 89, 91, *Mumtaz* v. *Sri Ram* (1913) 35 All. 524, 21 I. C. 462.

(*h*) *Bangarayya* v. *Nallapparaju* (1931) 131 I. C. 151, ('31) A. M. 302.

(*i*) *Ramji* v. *Chhote Lal* (1907) 29 All. 50.

(*j*) *Bhyrub* v. *Kalee* (1871) 16 W. R. 56.

(*k*) *Khushal Mal* v. *Mul Chand* (1882) Punj. Rec. No. 173, *Goluknath* v. *Lalla Prem Lal* (1877) 3 Cal. 307.

they are fairly conclusive evidence that a transfer has in fact been made (l) Notices of relinquishment are exempt under sec 90 (e) **S. 17 (1) (b)**

Agreement between first and second mortgagees of the same property to share equally money realised from their mortgages —Such an agreement does not create or declare or limit any interest in the mortgaged property itself and does not require registration (m)

Receipt passed by mortgagee —See notes to cl (c) of sub sec (1) under the head Receipts

Endorsement on mortgage bond acknowledging payment of mortgage-money —See notes to cl (xi) of sub-sec (2)

Acknowledgment of a mortgage —In the Punjab where the Transfer of Property Act is not in force a mortgage by conditional sale becomes on breach of the condition of repayment an absolute sale In one such case the mortgagee instead of sueing for possession by foreclosure sued to recover the mortgage debt and relied on an acknowledgment of the mortgage after breach of the condition It was held however, that though the acknowledgment might save the bar of limitation for the recovery of the debt, yet being unregistered it could not operate as a novation of the mortgage (n)

Partition

Instrument of partition —Instruments of partition of immoveable property of the value of Rs 100 or upwards require registration (o) This is so even though the partition is the result of a family arrangement if the arrangement is reduced to the form of a document for the purpose of formal record (p) Such an instrument may be in the form of a receipt or it may be a regular deed or it may be in any other form But whatever the form it requires registration as it 'declares' an interest in immoveable property,

(l) Narso v Nagava (1918) 42 Bom 359 45 I C 492 Motibhai v Desaibhai (1917) 41 Bom 170 38 I C 838 But see *Chandanmal* v *Bhaskar* (1920) 22 Bom L R 140 55 I C 619 and *Parkappa* v *Ningappa* (1925) 49 Bom 847, 91 I C 319 ('26) A B 40

(m) *Vyravan* v *Subramanian* (1920) 43 Mad 660, 47 I A 188 56 I C 642

(n) *Badri Das* v *Besu* (1933) 145 I C 159, ('33) A L 174

(o) *Shankar* v *Vishnu* (1876) 1 Bom 67, *Lakshmamma* v *Kameswara* (1890) 13 Mad 281 [between mother and son], *Anandrao* v *Joti* (1900) 24 Bom 615 *Upendra Nath* v *Umesh Chandra* (1910) 15 Cal. W N 375, 377, 378, 6 I C 346, *Jogi Reddi* v *Chinnabbi Reddi* (1929) 52 Mad 83 86 87, 56 I.A 6, 114 I.C 5, ('29) A PC 13, *Kishan Chand* v *Dina Nath* (1933) 141 I.C 487, ('33) A L 574, *Sahib Singh* v *Dalip Singh* (1933) 145 I.C. 691, ('33) A L 422

(p) *Ram Lal* v *Sita Bai* (1933) 14 Lah. 635 144 I.C 396 ('33) A L 648, *Ram Gopal* v *Tulshi Ram* (1929) 51 All. 79, 116 I.C 861, ('28) A A 641

S. 17 (1) (b)

provided the value of the interest so declared is Rs 100 or upwards Thus receipts signed by brothers at a partition between themselves in which they acknowledge having accepted certain portions of family property detailed in the respective receipts, constitute a partition, and are compulsorily registrable (*q*) Similarly when two coparceners executed an agreement appointing a third person to effect a partition by taking their bids for each of the properties and the partition was made in this way and endorsed on the back of the agreement, it was held that the document required registration (*r*), see note to cl (vi) of sub sec (2), " Award '

Change of status—An instrument of partition among members of a joint Hindu family dividing the family properties by metes and bounds requires registration If it is not registered, it is inadmissible in evidence, having regard to sec 49 to prove the *title* of any of the parties to the instrument to any particular property, or to prove that any particular property has ceased to be joint (*s*) But is it admissible to prove an intention to become divided in *status*, in other words, to prove that the parties ceased to be joint from the date of the instrument ? On this point there is a conflict of opinion, it being held in some cases that it is (*t*), and in others that it is not (*u*) The former view seems consistent with the decision of the Privy Council in the undernoted case (*v*)

Acknowledgment of partition as distinguished from instrument of partition—This clause refers to documents containing declarations of will and not mere statements of facts Thus a deed of partition which itself operates or is intended to operate as a declared volition constituting or severing ownership and causes a change of legal relation to the property divided amongst the parties to it, requires registration under this section But a writing which merely states that there has *in time past* been a partition, is not a declaration of will, but a mere statement of fact, and it does not require registration (*w*) The essence of the matter is, whether the deed is a part of the partition transaction or contains merely an incidental recital of a

(*q*) *Nilkanth* v *Hanmant* (1920) 44 Bom 881, 58 I C 415

(*r*) *Azimat* v *Kalwant* (1906) Punj Rec No 71

(*s*) *Kishan Chand* v *Dina Nath* (1933) 141 I.C 487, ('33) A L. 574

(*t*) *Subrahmania* v *Savitri* (1909) 19 Mad L. J 228, 3 I C. 321, *Saraswatamma* v *Paddayya* (1923) 46 Mad 349, 71 I C 274 ('23) A.M. 297, *Chhotalal* v *Bai Mahakore* (1917) 41 Bom 466, 40 I C. 83, *Lachmi Narain* v *Ram Narain* (1928) 10 Lah. L. J 75, 109 I C 533, *Subba Rao* v *Mahalakshmamma* (1931) 54 Mad 27, 128 I C 561, ('30) A M. 883

(*u*) *Pothi* v *Naganna* (1916) 30 Mad L. J 62, 32 I C 486, *Ayyakutti* v *Periaswami* (1916) 30 Mad L. J 404 31 I C 615

(*v*) *Ranjangam Ayyar* v *Ranjangam Ayyar* (1923) 50 I A 134, 46 Mad 373, 69 I C 123, ('22) A PC. 266

(*w*) *Sakharam* v *Madan* (1881) 5 Bom 232, *Anandrao* v *Joti* (1900) 24 Bom 615, *Kachubhai* v *Krishnabai* (1887) 2 Bom 635, *Panganayaki* v *Rukmani* (1923) 45 Mad L. J 100, 72 I C 456

previously completed transaction Where the intention of the parties is that the document should be the sole evidence of the partition, the deed, if not registered, is not admissible in evidence under sec 49 of the Act to establish the fact that the property was so partitioned nor is oral evidence admissible to prove the verbal agreement that preceded the deed, having regard to the provisions of sec 91 of the Evidence Act (x) See note, "Declare," on p 36 above **S. 17 (1) (b)**

Illustrations

(a) *A* and *B* in 1870 divide certain joint property between themselves In 1877 *B* passes a writing to *A* in these terms ' You have built houses and are building new houses on property *appertaining to your share* In the same I have no interest of any kind whatever The writing does not require registration It is not itself an instrument of partition declaring a right in the property It is a mere statement of fact admitting that there had formerly been a partition between the parties *Sakharam* v *Madan* (1881) 5 Bom 232

(b) A document recites a division of lands and ends with the words, " both of us are to act as stated above " The document is an instrument of partition and is compulsorily registrable under this section The concluding words do not make the document a mere record of a past transaction *Ramchandra* v *Dinkar* (1900) 2 Bom L R 800 See *Jaman* v *Chandu Ram* (1913) Punj Rec No 83, 18 I C 918

(c) Entries in the book of a third party consisting of details of a partition carried out by the parties to the partition independently of the third party, and made after the properties were divided from time to time, do not require registration, they being only recitals of a past transaction already completed *Kanhaya Lal* v *Fatta* (1900) Punj Rec No 48

(d) Three Hindu brothers forming a joint family own several immoveable properties In 1867 a deed of partition is executed by them whereby after reciting that *some years previously to its date* a division of the properties except certain houses had been effected, the parties divide the houses among themselves The deed requires registration as to the houses, but not as to the properties already divided among the parties *Kachubhai* v *Krishnabai* (1878) 2 Bom 635

Partition List.—A mere list of properties allotted at a partition is not an instrument of partition and does not require registration (y)

(x) *Upendra Nath* v *Umesh Chandra* (1910) 15 Cal W N 375, 378 379, 6 I C 346

(y) *Kshetra Mohan Pal* v *Tufani Talukdar* (1933) 37 Cal W N 112, 144 I.C. 868, (33) A.C 474.

S. 17 (1) (b)

Partition of moveable and immoveable property—Where an instrument of partition comprises both moveable and immoveable property, and is not registered though it requires registration it cannot be relied upon in support of a claim even in respect of the moveable property, if the transaction is one and indivisible and the partition of the moveable property cannot be separated from the rest (z) But it is otherwise if the partition of the moveables is separate from the remaining properties (a)

Partnership.

Partnership agreement: clause as to redemption of existing mortgage—*A* mortgages a piece of land with a saw mill thereon to *B* *A* being unable to repay the loan enters into a partnership with *C* and *D* upon the terms that the land should be transferred to the joint names of *A*, *C* and *D*, that *A*, *C* and *D* should raise a loan from *X* on a mortgage of the said premises to pay off *B*s claim, that *A*, *C* and *D* should work the mill as partners for three years, that *A* should be at liberty to redeem the said premises within three years for his sole benefit, but if he failed to do so, *C* and *D* alone should be entitled to redeem them The premises are conveyed in the names of *A*, *C* and *D* and a loan is raised from *X* upon a mortgage of the premises, and *B*s claim is paid off *A* then claims to redeem the mortgage *C* and *D* deny *A*s right to redeem *A* sues *C* and *D* for a declaration of his right to redeem The agreement requires registration under cl (b) The reason is that what but for the agreement would have been the right of the three partners to redeem is under the agreement made the sole right of *A* exercisable by him for his own sole benefit (b)

Transfer of a partner's share—The Madras High Court in one case (c) held that a deed of release of his share in the partnership business by one partner does not require registration even though the partnership owns immoveable property This was based on the reason that, though a partner may be a co owner of the partnership property, he has no right to ask for a share in that property but only that the partnership business should be wound up including therein the sale of the immoveable property and to ask for his share in the resulting assets In the subsequent case of

(z) *Lakshmamma* v *Kameswara* (1890) 13 Mad 281 286, *Pothi* v *Nagan na* (1916) 30 Mad L J 62 32 I C 486 [F B] Compare *Perumal Ammal* v *Perumal* (1921) 44 Mad 196 203 61 I C 461 (21) A M 137 (gift of moveable and immoveable property) *Cf* *Samuvier* v *Ramasubdier* (1932) 55 Mad 72 132 I C 305, (31) A M 580 (dissolution of partnership comprising moveable and immoveable property)

(a) *Thandavan* v *Valliamma* (1892) 15 Mad 336, *Subrahmania* v *Savitri* (1909) 19 Mad L J 228 234 3 I C 321, *Karamchand* v *Uma Datt* (1932) 138 I C 369 (32) A L 545

(b) *Maung* v *Mahomed* (1903) 30 I A 230, 30 Cal 1016

(c) *Venkataratnam* v *Subba Rao* (1926) 49 Mad 738 96 I C 881, (26) A M 1040

Samuvier v *Ramaswdier* (*d*) the Madras High Court dissented from that judgment and held that an instrument of dissolution of a partnership affecting or involving a modification of title to immoveable property requires registration Telang J in a Bombay case (*e*) has also held that registration is necessary S 17 (1) (b)

Division of property to be acquired —See note In future on p 36 above

Releases and Receipts

Release —A release when in writing in order to be operative in law must be registered when the amount of the claim to or interest in immoveable property which is extinguished by the release is of the value of Rs 100 or upwards A release may be in the form of a deed or a letter or a receipt It is the substance of the document that should be looked to and not the form (*f*) It has been held that as an attachment before judgment does not create title a document releasing an attachment before judgment does not require registration (*g*)

An agreement not to execute a decree though it may relate to immoveable property, does not operate as an extinguishment of an interest in immoveable property, and is not compulsorily registrable (*h*) See notes Maintenance of Hindu widow on p 59 below Hindu widow s estate on p 59 below

Agreement to abide by decree —An agreement to abide by the *decree to be passed by a competent court does not require registration even* though the suit relates to immoveable property (*h1*)

Disclaimer of title —A document containing a declaration that neither executing party has any title to an immoveable property of the value of upwards of Rs 100 and that it should be treated as wakf property, requires registration (*i*)

Instrument extinguishing lease on certain condition —In an Oudh case (*i1*) a duly registered lease was executed for a period of fifteen years and on the same day an agreement was executed between the same parties whereby the lessee agreed that if he failed to institute a suit on behalf of the lessee against a certain party then the lease was to be invalid This document was not registered The lessee failed to institute the suit as agreed but nevertheless filed a suit against the lessee for possession It was

(*d*) (1932) 55 Mad 72 139 I C 305 (31) A.M. 580

(*e*) *Jolarmal* v *Tejram* (1893) 17 Bom 235 256

(*f*) *Imam Ali* v *Baij Nath* (1906) 33 Cal. 613 621 622 *Safdar* v *Lachman* (1879) 2 All 504 *Basaua* v *Kalkapa* (1878) 2 Bom. 489 *Rangayya* v *Rameswara* (1897) 20 Mad 367

(*g*) *Gauri Dutt* v *Dowring* (1934) 151 I C 083 (34) A P 413

(*h*) *Krishnamacharar* v *Rukmani* (1905) 15 Mad L.J 370 *Abdul Samad Khan* v *Bibijan* (1925) 49 Mad L J 675 91 I.C 618 (25) A M 1149

(*h1*) *Bhirgunath* v *Mt Annapurna Dai* (34) A P 644

(*i*) *Kishen Chand* v *Municipal Committee of Amritsar* (1919) Punj Rec No 39 p 100 51 I.C. 391

(*i1*) *Anant* v *Ganga Bakhsh* (34) A O 447

17 conceded that the two documents constituted one transaction, but it was
(b) held that as the latter document required registration, and was not registered it was inadmissible in evidence and the lessee was entitled to possession under the registered deed

Receipts falling within sub-sec (1) (b).—A receipt may be framed and worded so as to purport expressly to create, declare, assign, limit or extinguish a right or interest in immoveable property, in which case it falls within cl (b), and requires registration (*j*) But unless, on the face of it, it purports or operates to create, declare, assign, limit or extinguish such right or interest, it does not fall within that clause (*k*)

Illustrations

(a) *A* sues *B* for lands and *B* pleads adverse possession *A* seeks to avoid the bar of limitation by proving an acknowledgment made by *B* in a petition to the Collector that the deed of gift under which she holds is invalid The petition does not require registration and is admissible in evidence for it does not itself declare title but is a mere recital of a fact (*l*)

(b) A receipt passed by a mortgagee to the mortgagor purporting to be an acknowledgment that the mortgage money has been paid and that the mortgage has been redeemed requires registration under cl (b) of this sub section (*m*)

Recitals

Recitals.—A document which itself creates or declares a title or an interest in immoveable property must be distinguished from one which is a mere narration of a transaction which took place in time past The Privy Council have said that "the distinction is between a mere recital of a fact and something which in itself creates a title" (*n*) The Calcutta High Court have said that the essence of the matter is whether the document is the transaction itself or contains merely an incidental recital of a previously completed transaction (*o*) A mere recital does not require registration. Thus, though an instrument of partition requires registration a document containing a recital that a partition took place in time past does not require registration (*p*) Similarly a deed of exchange requires registration, but not

(*j*) *Abdul Rahman* v *Gurdit Singh* (1934) 149 I C 154 (34) A L. 604

(*k*) *Jiwan* v *Basa Mal* (1886) 9 All 108 110 111 114

(*l*) *Bageshwari Charan* v *Jagarnath Kuari* (1932) 59 I A 130, 11 Pat 272 136 I C 798 (32) A PC. 55 overruling *Faki* v *Khotu* (1880) 4 Bom 590

(*m*) *Basawa* v *Kallapa* (1878) 2 Bom 489, *Nand Lal* v *Guditta* (1902) Punj Rec No 99 p 445

(*n*) *Bageshwari Charan* v *Jagarnath Kuari* (1932) 59 I A. 130 137, 11 Pat 272, 136 I C 798 (32) A PC 55

(*o*) *Upendra Nath* v *Umesh Chandra* (1910) 15 Cal. W N 375 378 379, 6 I C. 346

(*p*) *Sakharam* v *Madan* (1881) 5 Bom 232, *Kalo* v *Lakshmibai* (1878) 2 Bom 637, *Upendra Nath* v *Umesh Chandra* (1910) 15 Cal. W N 375, 378 379 6 I C 346

a document which contains a recital that an exchange of land took place in time past (q) In *Billoo* v *Udal* (r) where a petition of compromise in mutation proceedings was held not to require registration the Court said S. 17 (1) (b)

"The object of filing a petition of compromise in a mutation proceeding is to intimate to the Court in which that proceeding is pending that the matters in contention between the parties have been settled out of Court and do not any longer require determination and that the mutation may be effected in accordance with that settlement Indirectly the petition reciting the settlement might serve in a future proceeding as evidence of the terms of the settlement but its object is directly to obtain mutation in a particular manner and not to declare any right

In this case the recital could be used in evidence of the transaction recited in future proceedings because the transaction had not been reduced to the form of a document and could be made orally But if the transaction has been reduced to the form of a document or if it is one which the law requires to be written and registered then sec 91 of the Indian Evidence Act prevents the recital from being used as evidence of the transaction An illustration of this is the case of *Varatha Pillay* v *Jeevarathammal* (s) On the 10th October the owners of an estate presented a petition to the Collector reciting the fact that on the 8th October they had made a gift of the estate to *D* and praying that the estate be entered in *D* s name The Collector accordingly entered the estate in *D* s name Subsequently an heir of the late owners sued to recover the estate from *D* on the ground that the gift was invalid The Privy Council held that as sec 123 of the Transfer of Property Act requires a gift to be made by registered deed the oral gift was invalid and that sec 91 of the Indian Evidence Act was a bar to the recital in the petition being used as evidence of the gift Their Lordships, however made use of the recitals in the petition, not as evidence of the gift, but as explaining the nature and character of *D* s possession See as to this use of a recital the notes on sec 19 (a) and (c), at p 174

Admissions.

Admissions.—Admissions for the purposes of the Registration Act may be divided into three classes, namely —

(1) admissions of a past oral transaction ,

(2) admissions of a past transaction recorded in a registered document , and

(3) admissions of contents of unregistered documents in pleadings

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(q) *Amir ud din* v *Jamal ud din* (1891) Punj Rec No 26 p 148 *Gurumukh* v *Pohlo* (1894) Punj Rec No 120 See also *Ramchandra* v *Vellaya* (1924) 26 Bom L R 1203 85 I C 184 (25) A B 194

(r) (1921) 43 All 1, 5, 58 I C 732 (21) A.A. 248

(s) (1919) 46 I A 285 43 Mad 244, 53 I C 901

S. 17 (1) (b)

(1) A document which amounts merely to an admission of a past oral transaction such as a partition (*t*), lease (*u*) or transfer of an equity of redemption (*v*), does not require registration See notes to sec 17 (1) (b), "Acknowledgment of partition as distinguished from instrument of partition," on p 50 above

(2) A document which amounts merely to an admission of a past transaction recorded in a registered document does not require registration This is illustrated by the following decision of the Privy Council (*w*) Disputes arose about the management of a village which resulted in a suit A settlement was proposed by *A* and embodied in a document addressed to *B* and signed by *A* This was that *A* was to manage the village taking a salary and paying the expenses, the profits were to be divided equally but if there was a loss, *B* was to pay his share of the loss or lose his share of the village *B* presented the document for registration and the suit was compromised These facts showed that *B* accepted the settlement *A* acted upon the settlement and managed the village for four years and informed *B* that there had been a loss *B* replied by an unregistered letter that he would not take his share of the village and that *A* should take the whole profit and loss Nevertheless *B* assigned a half share to *C* who sued *A* for possession In this suit objection was raised that the letter was not admissible in evidence for want of registration But it was held that the letter did not require registration It was not itself the acceptance of the settlement but evidence that the settlement had been accepted and an admission that the condition on which the registered settlement was to operate had arisen

(3) As to admissions of contents of unregistered documents in pleadings, see note to sec 49 under the same heading

Miscellaneous transactions

Spes successionis —A deed purporting to relinquish or assign the chance of a Mahomedan heir (*x*), or a Hindu reversioner (*y*), succeeding to an estate does not require registration The reason is that the heir or reversioner has only a *spes successionis* or chance of succession and has no right or interest in the property vested or contingent (*z*) See Mulla's

(*t*) *Sakharam v Madan* (1881) 5 Bom 232

(*u*) *Narain v Ramkrishna* (1880) 5 Cal 864

(*v*) *Imam Valad v Bhan* (1917) 41 Bom 510, 40 I C 68, *Narso v Nagara* (1918) 42 Bom 359, 45 I. C. 492 both cases of Rajinamas and kabulayats.

(*w*) *Pandurang v Markandaya* (1921) 49 Cal. 334 49 I. A 16, 65 I C 954, (22) A PC. 20

(*x*) *Abdool v Goolam* (1906) 30 Bom. 304

(*y*) *Mallik Saheb v Malik Arjunappa* (1914) 38 Bom 224 22 I C 292, *Bhana v Guman Singh* (1918) 40 All 384, 44 I C 629, *Indar Singh v Munshi* (1922) 4 Lah L. J 301, 303, *Gurbhaj v Lachhman* (1925) 6 Lah. 87, 88 I. C. 550, (25) A L. 341

(*z*) *In re Parsons* (1890) 45 Ch D 55, *Amrit Narayan v Gaya Singh* (1918) 45 I A. 35, 45 Cal. 590, 44 I C 103

S. 17 (1) (b)

Transfer of Property Act notes on sec 6 (a) In the Punjab where the Transfer of Property Act is not in force such a relinquishment gives rise to an enforceable right (a) The Lahore High Court have said that such a relinquishment requires registration but that an undertaking by a Hindu reversioner not to contest an alienation need not be registered (b)

Family arrangement.—A family arrangement does not involve a transfer but is a settlement in which each party takes a share of the family property by virtue of an independent title which is to that extent admitted by the other parties (c) Such an arrangement does however involve a declaration of right under sec 17 (1) (b) The law as to the registration of *documents comprising family arrangements* was considered by the Allahabad High Court in a recent Full Bench case (d), and the following propositions were laid down —

(1) In the usual type of family arrangement unless any item of property which is admitted by all the parties to belong to one of *them is allotted to another, there is no* exchange or other transfer of ownership A binding family arrangement of this type can be made orally, and if made orally, no question of registration arises

(2) If such arrangement is followed by a writing containing reference to it then the question is whether thereby the terms of the arrangement have been reduced to the form of a document within the meaning of sec 91 of the Evidence Act 1872, *i e*, *formally recorded in a document with the purpose that they* should be evidenced by that document, and that is a question of fact in each case to be determined upon a consideration of the nature and phraseology of the writing and the circumstances in which and the purpose with which it was written

(3) *If such arrangement* was in fact reduced to the form of a document ' registration (when the value is Rs 100 or upwards), is necessary by section 17 of the Registration Act, and the absence of registration makes the document inadmissible in evidence under section 49 of the Registration Act, in proof of the arrangement, and under section 91 of the Evidence Act no other proof thereof can be given

(a) *Naranjan Singh* v *Dharm Singh* (1930) 129 I C 29 (30) A L 928

(b) *Gulab* v *Mehndi* (1922) 3 Lah 112, 67 I C 417, (22) A I 95

(c) *Hiran Bibi* v *Sohan Bibi* (1914) 18 Cal W N 929 24 I C 309 *Khunni Lal* v *Gobind Krishna* (1911) 38 I A 87, 33 All 356 10 I C 471

(d) *Ram Gopal* v *Tulshi Ram* (1929) 51 All 79 116 I C 861, (28) A A 641, *Umrao Singh* v *Lachhman Singh* (1911) 33 All 344 38 I A 104 10 I C 285, *Sital Singh* v *Gajendra* (1929) 4 Luck. 57 116 I C 59, (29) A O 373 *Mest Bhagwan Dei* v *Shib Singh* (1930) 126 I C -- (30) A A 341

.17 (4) If the terms were not ' reduced to the form of a document," registration was not necessary, even though the value is Rs 100
)(b) or upwards, and while the writing cannot be used as a document of title it can be used as a piece of evidence for what it may be worth, *e g* as corroborative of other evidence or as an admission of the transaction or as showing or explaining conduct

Compromise.—A compromise affecting immoveable property is not a sale within the meaning of sec 54 of the Transfer of Property Act The nature of a compromise is that it is an acknowledgment of the existing rights of the parties (*e*) See note above, "Family arrangement"

Power of Attorney.—A power of attorney which authorizes the donee to recover the rents of an immoveable property belonging to the donor for the donee s own benefit is an assignment within the meaning of cl (b), and requires registration (*f*) Similarly a power of attorney which creates a charge in favour of the donee on the immoveable property referred to therein requires registration (*g*)

Power of sale—A document which gives a right to a creditor to have an immoveable property brought to sale and to recover out of the proceeds the money lent by him, requires registration (*h*)

Deed of wakf—Where by a wakfnamah the owner of an immoveable property dedicates the property to God and constitutes himself the first mutawali (superintendent), and reserves to himself the power of appointing mutawalis jointly with him, the wakfnamah requires registration as it *extinguishes* the ownership of the wakf, though it does not purport to transfer the ownership to the mutawalis as in the case of an English indenture of trust (*i*)

Appointment of new trustees—A deed of appointment of new trustees which in itself does not purport or operate to create any interest in the trust property, does not require registration (*j*)

Guardianship of property.—A document appointing a person guardian of the property of a minor is not a transfer or assignment of the minor's property to the guardian, and does not require registration (*k*)

Landlord's reversion—Sec 54 of the Transfer of Property Act provides that a sale of a reversion or other intangible thing can only be

(*e*) *Krishna* v *Aba* (1910) 34 Bom 139

(*f*) *Ganpat* v *Idarji* (1879) 3 Bom 312 326

(*g*) *Indra Bibi* v *Jain Sirdar* (1908) 35 Cal 845 848 849

(*h*) *Kala Chand* v *Gopal* (1869) 12 W R 103

(*i*) *Muhammad Rustam Ali* v *Mushtaq Husain* (1920) 47 I A 224, 227, 42 All 609, 612 57 I C 329, (21) A PC 105

(*j*) *Fatmabibi* v *Shaik Hassan* (1907) 9 Bom L R 1071, 1079 See also *Gincedhar* v *Nitto Gopal* (1872) 19 W R 291 [shebaitnama] and *Muhammad Rustam Ali* v *Mushtaq Husain* (1920) 47 I A 224 *supra*

(*k*) *Amirdam* v *Muthukumara* (1903) 13 Mad L J 303

effected by a registered instrument, whatever may be the value of such interest. *A* lets a piece of land to *B*. During the tenancy and while the land is in the occupation of *B*, *A* sells his interest in the land to *B*. Does the document require registration? According to the High Court of Bombay, it does, the sale being one of landlord's reversion (*l*). This view of the law does not seem to have been present to the minds of the learned judges who decided the undermentioned case (*m*). S. 17 (1) (b)

Covenant not to alienate. A covenant by a debtor not to alienate his property without mentioning any specific property does not operate as a charge on any property (*n*).

Easement of light.—An easement of light is, no doubt, immoveable property, but it must be an easement, an acquired easement, not the chance of acquiring one. A writing by which the owner of a building promises to raise no objection to certain windows being shut up when his neighbour builds his house higher, does not limit a right to immoveable property; its effect is to prevent such a right being acquired, but it does not of itself limit or extinguish any such right. Such a writing, therefore, does not require registration (*o*).

Right of way.—See note 'Rights to ways' under sec. 2(6), at p. 5.

Maintenance of Hindu widow.—The right of a Hindu widow to maintenance does not constitute a charge upon the immoveable property of the joint family, and does not require registration. A release therefore by a widow of her right to maintenance does not require registration (*p*). A deed conferring a right of maintenance upon a Hindu wife in consideration of marriage requires registration (*q*).

Hindu widow's estate.—The estate which a Hindu widow takes in the immoveable property left by her husband in cases governed by the Customary Law of the Punjab is a "right, title, or interest" in the property within the meaning of this clause. A release, therefore, of such interest by the widow requires registration (*r*).

Hiba-bil-iwaz.—See note to cl. (a) above under the same heading, on p. 34 *ante*.

Gift in lieu of dower.—See note to cl. (a) above under the same heading, on p. 34 *ante*.

(*l*) *Bhaskar* v. *Padman* (1916) 40 Bom. 313, 33 I. C. 267.

(*m*) *Sibendrapada* v. *Secretary of State for India in Council* (1907) 34 Cal. 207.

(*n*) *Najibulla* v. *Nusir* (1881) 7 Cal. 196.

(*o*) *Sultan Navaz* v. *Rustomji* (1896) 20 Bom. 704, 714, 715. See also *Bhagwan* v. *Narsingh* (1909) 31 All. 612, 3 I. C. 615.

(*p*) *Kalpagathachi* v. *Ganapathi* (1881) 3 Mad. 184.

(*q*) *Bai Parsan* v. *Lallubhai* (1932) 34 Bom. L. R. 409, 138 I. C. 274, ('32) A. B. 217.

(*r*) *Shahab Din* v. *Mussammat* (1912) Punj. Rec. No. 92, p. 324, 14 I. C. 749.

S. 17 (1) (c), (d)

Other receipts.—*A* sells two houses to *B* *B* then sues *A* for possession *A* admits the sale, but alleges that he repurchased the houses from *B* and produces a receipt passed to him by *B* in these terms "Thus you [that is, *A*] have paid us [that is, *B*] in all Rs 322 8 0 [which included Rs 100, the consideration for the re purchase] which we have received Now up to date nothing is due to us by you Should there be any khata or bond, the same is to be deemed as cancelled We have no longer any interest remaining in any way in the aforesaid two houses We shall execute to you a new sale deed on a stamp" The receipt requires registration under cl (c), for the payment of the consideration by which the title to the properties is completed is evidenced by the receipt and the payment extinguishes the plaintiff s title to the properties The document is not an agreement falling within cl (v) of sub sec (2), for it itself extinguishes *B*'s right to the property (*a*)

Receipt given by a pattidar to a lambardar—Such a receipt does not require registration (*b*)

Oral evidence—A receipt which requires registration under this clause is not admissible in evidence, if not registered, to prove even payment of the money acknowledged by the receipt, though *oral* evidence is admissible under sec 91 of the Evidence Act, 1872, to prove the payment notwithstanding the existence of the receipt (*c*)

SEC. 17 (1) (d)—LEASES.

Earlier Registration Acts.—Under Acts 16 of 1864 and 20 of 1866 the only leases that required registration were those for a period exceeding one year A document dated the 17th February 1865 purporting to create a permanent tenancy required registration under sec 13 of the Act of 1864 and being unregistered could not be received as evidence under sec 49 of the present Act (*d*) Leases from year to year and those reserving a yearly rent were first made compulsorily registrable by Act 8 of 1871

Lease—See note under sec 2 (7) above A lease may be constituted by two documents in which case each document must be registered (*e*)

(*a*) *Parashram* v *Ganpat* (1897) 21 Bom 533

(*b*) *Bhagwan Das* v *Alladeyi* (1883) All. W N 49

(*c*) *Waman* v *Dhondiba* (1880) 4 Bom 126 137, *Ramchandra* v *Bapu* (1899) 1 Bom L.R. 91 *Appamma* v *Pamanna* (1900) 23 Mad 92, *Lala* v *Sardara* (1934) 151 I C 884 (34) A L. 472, *Sharaf Ali* v *Jagandar* (1916) Punj Rec No 98, p 296 37 I C. 132, *Amir* v *Diala Mal* (1904) Punj Rec No 39, p 124, *Sher Khan* v *Muzaffar Khan* (1920) 1 Lah 25, 55 I C 944, *Nabi Bakhsh* v *Mewa Ram* (1887) All W [illegible] 188; *Soorjo Coomar* v *B*[illegible]*n* (1875) 24 W R 328

(*d*) *Datto* v *Bal*[illegible]) 58 Bom 419, 150 I C [illegible] B 104

(*e*) *Shri Satyah*[illegible] *ghunath* (19[illegible]6) 28 [illegible] 96 I C 8[illegible] (26) A [illegible]

Land which belonged to *A* was acquired by Government for a railway siding for the benefit of *B*'s mill *B* in consideration of an agreement by *A* not to oppose the acquisition of the land agreed to pay *A* 'rent' for the land The agreement was not a lease and did not require registration for after the acquisition *A* had no interest in the land (*f*) **S. 17 (1) (d)**

Leases under Transfer of Property Act—Sec 107 of the Transfer of Property Act, 1882, provides that a lease of immoveable property from year to year or for any term exceeding one year or reserving a yearly rent can be made only by a registered instrument All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession except in cases where the Local Government has issued a notification under the proviso to that section

Agricultural Leases—Leases for agricultural purposes are exempted from the provisions of sec 107 of the Transfer of Property Act and from the other provisions of Chapter V of that Act Such leases may be made orally or in writing, and if in writing require registration under sec 17 (1) (d) if they are from year to year or for any term exceeding one year or reserving a yearly rent (*g*)

Punjab Leases—Leases in the Punjab where the Transfer of Property Act is not in force may be made by oral agreement and the execution of a document is not necessary (*h*)

Subleases under the Bengal Tenancy Act—Under clause (1) of sec 85 of the Bengal Tenancy Act 1885 a sublease by a raiyat without his landlord's consent shall not be valid unless made by registered instrument Under clause (2) of the same section a sublease by a raiyat shall not be admitted to registration if the term exceeds nine years Therefore if a permanent sublease is registered the registration is invalid and it is not admissible as evidence of the sublease (*i*)

Agreement to Lease—See note under sec 2 (7) under the same heading on p 10 above

Leases from year to year

A tenant from year to year is one who holds under a demise (express or implied) for a term which may be determined at the end of the first or any subsequent year of the tenancy, either by the landlord or the tenant by a regular notice to quit *If no such notice be given, the*

(*f*) *Govindlal v Manekchouk Spg & Wg Mills* (1934) 36 Bom L R 174 151 I C 156 (34) A B 140

(*g*) *Sivasubramania v Theerthapathi* (1933) 64 Mad L J 676 144 I C 27, (33) A M 451

(*h*) *Sunder Singh v Ramsuran Das* (1932) 14 Lah 137 142 I C 754, (33) A L 61

(*i*) *Arjun Chandra v Trailakya* (1933) 37 Cal W N 333 146 I C 246, (33) A C 610

S. 17 (1) (d) *tenancy will continue from year to year* for any number of years until surrendered, or extinguished by the statute of Limitations, or the lessor's title ceases (*j*) No notice to quit is necessary in the case of a lease for a year (*k*) Leases from year to year were not included in the list of documents made compulsorily registrable by Acts 16 of 1864 and 20 of 1866 See notes, "Earlier Registration Acts," on p 62 above

Illustrations

(1) *A* grants a lease to *B* in these terms "We execute this patta, after obtaining a kabuliyat from you at an annual rent of Rs 16 According to the instalments hereinafter mentioned, you shall pay the rent *shan ba shan* (year after year)" This is a lease from year to year *Ramo Kumar* v *Brajahari* (1868) 2 Beng L R A C 75

(2) A kabuliyat passed by a tenant to his landlord is in these terms 'We have taken three fields for cultivation from you *dar salne mate* (year by year) on condition that we are to pay the assessment We shall go on paying the assessment to Government so long as you give us the fields for cultivation If we say anything false or unfair, or if you come to hear of any fraud or deceit on our part or if we practise such fraud or deceit, we shall restore possession of the fields to you as soon as you ask us to do so" *Held* that the words *dar salne mate* taken in connection with the total absence of any date for the expiry of the tenancy suggested that the parties contemplated that the lease should operate for a period exceeding one year, and hence required registration *Held* also that the words "so long as you give us the fields for cultivation" did not give the landlord power to resume possession whenever he chose but was only a usual and polite way of saying "so long as I am in fact your tenant" *Dhurabhai* v *Mohanlal* (1917) 41 Bom 458, 39 I C 625

(3) A kabuliyat executed by a tenant is in these terms "We shall be paying year after year Rs 38 as rent for the said lands for each year beginning from the past Adi month If we vacate the said garden, we shall pay off the rent due up to 30th Masi of such year, and deliver the land to you Whatever may be the year in which we vacate it, we shall not deliver possession of it to you in any other month than Masi' This is a lease from year to year and requires registration *Murugesa* v *Chinnathambi* (1901) 24 Mad 421.

For other instances of leases from year to year, see n Lease for one year to remain in force until a fresh lease is granted 68 below

(*j*) Woodfall's Law of Landlord and Tenant, 21st ed., p 271 See Transfer of Property Act, 1882, sec 1

(*k*) See ... sec

For any term exceeding one year

S. 17 (1) (d)

Term – The term of a lease for purposes of registration must be understood to mean the period for which the lessee is protected against dispossession at the will and pleasure of his lessor or in other words the length of time for which the lessee is entitled to continue in possession provided he himself fulfils all the stipulated conditions (*l*)

Lease for a year with option of renewal to tenant Before the amendment of sec 107 of the Transfer of Property Act by Act 6 of 1904 registration of an instrument of lease not exceeding one year was not necessary under the Transfer of Property Act nor under the Registration Act whatever the rent reserved by the lease (*m*) But a lease for a term exceeding one year has always required registration, however small the rent may be (*n*) A lease for one year containing an option to the tenant to renew for a further period of one year or any other term is not a lease for a term exceeding one year, and does not require registration under this clause (*o*) The leading case on the subject is *Hand v Hall* (*p*) decided by the Court of Appeal in England in 1877 According to the law then in force a lease for a period exceeding three years required to be under seal and if it was not under seal it was invalid The question in that case was whether the lease which was not under seal was a lease for a term exceeding three years The lease was in these terms Hand agrees to let, and Hall agrees to take the large room etc , from 14th February next until the following midsummer *twelve months* and with right at end of that term for the tenant, by a month s previous notice to remain on for three years and a half more It was held that the option to Hall the tenant, to renew the lease for three years and a half, did not make it a lease for a term exceeding three years and that the lease did not require to be under seal Lord Cairns said By this latter part of the agreement an option is given to the defendant, and must be exercised by him before it can be said that any interest has passed to him It is a stipulation that at his option on a notice given to the plaintiff he shall not be disturbed for three years and a half Whereas there is not anything to be done by the tenant in the first part of the agreement to create a demise in the second part *something has to be done by him before that part takes effect*, and until

(*l*) *Murshi Lal v The Notified Area of Barant* (1914) 36 All. 176 179 22 I C 933

(*m*) *Seetharama v Biyanna* (1894) 17 Mad 275, 277

(*n*) *Shaikh Omar v Abdool* (1868) 9 W P 425, *Baij Nath v Kundan Lal* (1929) 27 All L J 1134, (29) A A 831

(*o*) *Boyd v Kreig* (1890) 17 Cal 548 dissenting from *Bhobani v Shibnath* (1886) 13 Cal 113, *Fazuddin v Asrab Ali* (1923) 37 Cal L J 275, *Yousaf v Poleologo* (1906) 8 Bom L R 580, *Radhika Prasad v Ramsundar* (1868) 1 Beng L R A C 7, 9, *Devidas v Aluwalla Bros* (1932) 140 I C 681, (32) A S 217

(*p*) (1877) L R 2 Ex Div 355, on app from (1877) 2 Ex. Div 318

[illegible]

[illegible] as he pays the rent [illegible]

[illegible] enter [illegible] been [illegible] will be [illegible] a year

[illegible]

[illegible] in the [illegible] I have given the [illegible] on rent to [illegible] a period of [illegible] to keep [illegible] Tayabba [illegible] shall not be raised [illegible] I [illegible] the rent I shall have the right to turn [illegible] This is a tenancy for a period exceeding one year *Karam* [illegible] (1921) 3 Lah. L. J. 14 [illegible] I. C. 914.

In January 19[illegible] A [illegible] to *B* at a monthly rent of eight [illegible] ejectment if the rent be not paid. The lease also [illegible] that though the rent fixed is eight annas per month [illegible] year Rs. 6 (the amount of rent for twelve months) at [illegible] with June) every year. *Held* that there was nothing [illegible] which entitled the tenant to occupy the hut as long as he liked [illegible] lease was not for a period exceeding one year and did not [illegible] *Allah* [illegible] (1921) 2 Lah. 300 [illegible] I. C. 2[illegible] (22) L. L. 43 [illegible] from (1921) 3 Lah. L. J. 222 [illegible] I. C. 22[illegible] (21) [illegible]

[illegible] *The Secretary of State* [illegible] Punj. Rec. No. [illegible] *Pukhree Nath* (1872) [illegible] P. 3[illegible] [illegible] (1900) 2 Bom. L. R. 4[illegible] *Karam Bakhsh* v. [illegible] (1921) 3 Lah. L. J. 14 [illegible] I. C. 914.

S. 17 (1) (d)

(3) *A* executes a kabuliyat to *B* at an annual rent of Rs 3 The writing contains this stipulation "I do declare that I shall continue to pay the annual rent every year, and that if I should fail to pay the rent in any year, the owners of the house shall be at liberty to recover the rent through the Court" *Held* that the lease did not contain any provision that so long as the rent continued to be paid, the landlord should not eject the tenant and that the lease was for a term of one year only *Khayali* v *Husain* (1886) 8 All 198

(4) A kabuliyat is in the following terms Whereas I having taken land from Khairat Husain am building a shop thereon at my own cost, I promise and give it in writing that I will pay to Khairat Husain every month a rent of 3 annas a month In any month in which I shall fail to pay the rent, Khairat Husain will be competent to have the shop vacated by me This is not a lease for more than a year The part of the lease expressly providing for re entry on non payment of rent does not raise the inference that the lease is a lease in perpetuity *Khairat Husain* v *Mahesri* (1897) All W N 69 *Kashi Nath* v *Abdur Rehman* (1922) 20 All L J 211, 65 I C 836, ('22) A A 54

(5) A dastak which merely allows a tenant to take possession of the land and to cultivate it is not a lease for a term exceeding one year, and does not require registration *Ahmad* v *Tohi* (1910) 13 Cal W N 267, 4 I C 511

Lease for one year and thereafter at lessor's option— An agreement of tenancy for one year certain, coupled with an expression on the tenant's part of readiness to hold the land longer at the same rent *if the landlord should allow it*, does not create in the tenant any interest extending beyond one year At the end of the year it would depend entirely on the landlord whether the tenancy should be renewed or not Such an agreement does not bind the landlord to continue the tenant in ocupation for more than one year and it does not therefore require registration At the close of the term the tenancy would be merely a monthly tenancy (r)

Illustrations

(1) A kabuliyat executed by a tenant is as follows "We undertake to cultivate the said land for the year 1872 at a rental of Rs 25 which we agree to pay punctually *If you permit us to cultivate the land for another year*, we will pay the same rent as settled for this year *If you choose to withdraw the land*, we are not to object" This

(r) *Aju* v *Narlari* (1878) 3 Bom 21 *Jagjivandas* v *Narayan* (1884) 8 Bom 493, *Mors* v *Tukaram* (1868) 5 Bom. H C A C 92, 94, *Mohunto Southo Prasad* v *Pughoo* (1876) 26 W R 98

S 17 (1) (d)

that is done it is impossible to tell whether a tenancy shall come into force or not I think therefore that it is absolutely necessary to divide the contract into two parts I think the agreement is an actual demise with a stipulation superadded that if at his option the tenant gives the landlord a notice of his intention to remain he shall have a renewal of his tenancy for three years and a half This case has been accepted by all the High Courts of India as one applicable to the determination of questions as to the term of leases arising under this clause

Option to tenant to continue so long as he pays the rent— In *Hand v Hall* cited in the preceding paragraph there was in the first instance a present demise for twelve months and there was something to be done by the tenant before the renewal clause could operate namely to give one month s previous notice to the landlord But where nothing remains to be done by the tenant no fresh document being required nor any notice having to be given and the tenant is entitled to hold on so long as he continues to pay the stipulated rent or render the stipulated service, the tenancy is one for a period exceeding one year, and the lease must be registered (q) But the writing must clearly show that the tenant is entitled to continue in occupation so long as the rent is paid if it does not, the Court will not treat it as one creating a tenancy for more than a year

Illustrations

(1) *A* grants a lease to *T* in the following terms To day 1st January 1915 I have given the shops on rent to Tajuddin at a rental of *Rs 3 8 0 per month* rent to be paid *monthly* So long as Tajuddin occupies the shop the rent shall not be raised nor lowered *nor shall I eject him* But in case of his refusal to pay the rent I shall have the right to turn him out This is a tenancy for a period exceeding one year *Karim Bakhsh v Natha Singh* (1921) 3 Lah L J 14 66 I C 901

(2) In January 1906 *A* lets a hut to *B* at a monthly rent of eight annas with a provision for ejectment if the rent be not paid The lease also contains a provision that though the rent fixed is eight annas per month *B* should pay *Rs* 6 (the amount of rent for twelve months) at *mina n* (which corresponds with June) every year *Held* that there was nothing in the lease which entitled the tenant to occupy the hut as long as he liked and that the lease was not for a period exceeding one year and did not require registration *Attra* v *Mangal* (1921) 2 Lah 300 65 I C 254 (22) A I 43 on app from (1921) 3 Lah L J 222 60 I C 226 (21) A L 96

(q) *Pool v The Secretary of State* (1886) Punj Rec No 68 *Sheo Chola v Buddree Nath* (1879) 4 N W P 36 *Mana v Lallubhai* (1900) 2 Bom L R 458 *Karim Bakhsh v Natha Singh* (1921) 3 Lah L J 14 66 I C 904

S. 17 (1) (d)

(3) *A* executes a kabuliyat to *B* at an annual rent of Rs 3 The writing contains this stipulation "I do declare that I shall continue to pay the annual rent every year, and that if I should fail to pay the rent in any year, the owners of the house shall be at liberty to recover the rent through the Court" *Held* that the lease did not contain any provision that so long as the rent continued to be paid, the landlord should not eject the tenant, and that the lease was for a term of one year only *Khayali* v *Husain* (1886) 8 All 198

(4) A kabuliyat is in the following terms "Whereas I having taken land from Khairat Husain am building a shop thereon at my own cost, I promise and give it in writing that I will pay to Khairat Husain every month a rent of 3 annas a month In any month in which I shall fail to pay the rent, Khairat Husain will be competent to have the shop vacated by me" This is not a lease for more than a year The part of the lease expressly providing for re entry on non payment of rent does not raise the inference that the lease is a lease in perpetuity *Khairat Husain* v *Malesri* (1897) All W N 69, *Kashi Nath* v *Abdur Rehman* (1922) 20 All L J 211, 65 I C 836, ('22) A A 54

(5) A dastak which merely allows a tenant to take possession of the land and to cultivate it, is not a lease for a term exceeding one year, and does not require registration *Ahmud* v *Tohi* (1910) 13 Cal W N 267, 4 I C 511

Lease for one year and thereafter at lessor's option.— An agreement of tenancy for one year certain, coupled with an expression on the tenant s part of readiness to hold the land longer at the same rent *if the landlord should allow it*, does not create in the tenant any interest extending beyond one year At the end of the year it would depend entirely on the landlord whether the tenancy should be renewed or not Such an agreement does not bind the landlord to continue the tenant in ocupation for more than one year, and it does not therefore require registration At the close of the term the tenancy would be merely a monthly tenancy (r)

Illustrations

(1) A kabuliyat executed by a tenant is as follows "We undertake to cultivate the said land for the year 1872 at a rental of Rs 25 which we agree to pay punctually *If you permit us to cultivate the land for another year*, we will pay the same rent as settled for this year *If you choose to withdraw the land*, we are not to object" This

(r) *Arju* v *Narhari* (1878) 3 Bom 21, *Jagjivandas* v *Narayan* (1884) 8 Bom 493, *Mors* v *Tukaram* (1868) 5 Bom H C A C 92, 94, *Mohunto Southo Prasad* v *Rughoo* (1875) 26 W R 98

S. 17 (1) (d) does not create a tenancy for a term exceeding one year, and the writing does not require registration *Apu* v *Narhari* (1878) 3 Bom 21

(2) A kabuliyat executed by a tenant is in these terms ' I have taken from you the land as described above, for cultivation from the year 1868 I will pay you for it 7 khandis of rice annually according to the custom of the village *I will continue to pay you rice annually, as stated above, so long as you will keep the land in my possession*' This does not create a tenancy for a term exceeding one year and the writing does not require registration *Jagjivandas* v *Narayan* (1884) 8 Bom 493

Lease for one year or more with power to lessor to eject tenant at any time.—Where a person grants a lease to another at a fixed annual rent with a stipulation that the latter shall vacate the property when asked to do so by the former, the lease is not one even for a year, and it does not require registration (*s*) The same principle applies to a lease for an indefinite period which can be terminated by either party at the end of any month (*t*)

Illustration

A grants a lease to *B* for 6 years on a specified yearly rent The lease contains this stipulation ' And if the said Shaikh [lessor] wishes to have the land vacated within the said term he shall first give us 15 days notice, and we will vacate it without objection " This does not create even the usual lease from month to month, and it does not require registration *Khuda Bakhsh* v *Sheo Din* (1886) 8 All 105

Lease for one year to remain in force until a fresh lease is granted.—A lease for one year at a specified annual rent containing a provision that it shall remain in force until another lease is granted is a lease from year to year (*u*) In such a case if no new lease is granted at the expiration of one year, the tenant is entitled to continue in possession on the same terms without any further act being done on either side But when a lease for a year provides that at the close of the year a fresh settlement will be made, it is a lease for one year only and does not require registration (*v*)

(*s*) *Khuda Bakhsh* v *Sheo Din* (1886) 8 All 105 [15 days notice] *Muhammad* v *Bakhtwar* (1895) Punj Rec No 70 [to vacate when required], *Hansy* v *Har narain* (1886) All W N 115 [15 days notice], *Latnusalha jathi* v *Venkatachalam* (1891) 14 Mad 271 [to vacate when required], *Inti ars* v *Ilahi Bakhsh* (1911) 8 All. L. J 600 10 I C 314, *Jivraj* v *Atmaram* (1880) 14 Bom 319 *Narayan* v *Shivlankardas* (1932) 34 Bom L. R 959 139 I C. 258, (32) A B 493

(*t*) *Umar* v *Balleo Singh* (1915) Punj. Rec No 97 p 389, at p 392, 32 I C 3

(*u*) *Venkatachellam* v *Audian* (1881) 3 Mad 328, *Veeraswami* v *Rungayyangar* (1882) 4 Mad 381

(*v*) *Jugdesh* v *Abdullah* (1870) 14 W R. 68.

Lease for more than a year giving right of re entry to lessor on breach of conditions — A lease for 30 years reserving a yearly rent is a lease for a term exceeding one year though it may contain a covenant giving the lessor a right of re entry in the event of a breach of condition on the part of the lessee Such a lease is also a lease reserving a yearly rent within the meaning of this clause and requires registration (w) It cannot be said of such a lease that it is terminable at the option of the lessor S 17 (1) (d)

Lease for more than a year with power to lessor to reduce the term on payment of a sum of money — A lease for more than a year is none the less a lease for a term exceeding one year because the full term for which it is granted may be reduced to one for less than a year on payment of a sum of money by the lessor (x) It cannot be said of such a lease that it is terminable at the option of the lessor There is something to be done by the lessor before he can reduce the term namely payment of a sum of money

Lease for more than a year obliging lessee to buy the property if conditions of lease not performed — A lease of a house for three years containing a covenant by the lessee that if he fails to execute the necessary repairs during the term of the lease he shall purchase the property for Rs 60 is a lease for a term exceeding one year and requires registration, for the lessee may perform the conditions of the lease and thus continue in possession under the lease for more than one year (y)

Lease for life of the lessee — A lease for the life of the lessee is a lease for a term exceeding one year as it entitles the lessee to hold for more than one year if he lives so long It is not a lease terminable at the end of a year or at the option of the lessor It therefore requires registration ( )

Lease in perpetuity —A lease in perpetuity being a lease for more than a year, must be registered (a)

Lease reserving a yearly rent

Lease reserving a yearly rent — A lease by which a yearly rent is reserved as contemplated by this clause must be one which on the proper construction of it creates a tenancy from year to year (b) If the lease reserves

(w) *Munshi Lal* v *The Notified Area of Bara t* (1914) 36 All 176 1"9 2 I C 933

(x) *Buksh Ali* v *Sree utty Nubotara* (18 0) 13 W I 468

(y) *Sa nbayya* v *Gang yya* (1890) 13 Mad 308

( ) *Purshota* v *Nana* (1894) 18 Bom 109

(a) *Agra B ndh* v *Mohan B Iram* (1903) 30 Cal 20 2o *Sheikh Elahi* v *Sheikh H Iu* (1913) 18 C W N 38 20 I C 907

(b) *J raj* v *At aran* (1890) 14 Bom. 319

S 17 (1) (d) a yearly rent it must be registered though it provides that the rent shall be payable by monthly (c) or six monthly (d) instalments

Illustration

A kabuliyat executed by a tenant is in these terms "I have this day hired from you your two houses at a rent of Rs 18 per annum I am to live therein so long as you will allow me to do so and pay the rent as mentioned above When you will ask me to vacate, I will do so without dispute The writing creates a tenancy at will although an annual rent is reserved *Jiraj* v *Atmaram* (1890) 14 Bom 319 [This case belongs to the class of cases dealt with above under the head "Lease for one year or more with power to lessor to eject tenant at any time," on p 68 above]

Proviso to cl (d)

"The terms granted by which do not exceed five years — Two conditions must be fulfilled before a lease can be exempted under this clause the first is that the term must not exceed five years, and the second that the annual rent reserved must not exceed Rs 50 The expression the terms granted by which do not exceed five years' means 'the terms granted by which are not for a definite period exceeding five years If the lease is one for a *definite* period exceeding five years it does not come within the exemption But it is within the exemption if it is not for a definite period exceeding five years and the annual rent reserved does not exceed fifty rupees Thus a lease for one year with a provision that it should remain in force until the execution of a fresh lease is not a lease for a definite period exceeding five years but is only one from year to year *which may be put an end to at the end of the year* (e)

Annual rent not exceeding Rs 50 —To fulfill this condition it is not necessary that an annual rent should be reserved What is necessary is that if an annual rent is reserved it should not exceed Rs 50 Thus a lease for a term of 3 years which reserves no annual rent, but only provides for the payment of a lump sum of Rs 56 4 0 as rent for the whole period of 3 years is within the exemption (f)

Cases governed by the Transfer of Property Act —It was at one time held that leases falling under sec 107 of the Transfer of Property Act were compulsorily registrable notwithstanding a Government notification issued under the proviso to sec 17 (1) (d) of the Registration

(c) *Charu* v *Satya* (1919) 23 C W N 641, 51 I C 415

(d) *Ali Muhammad* v *Shankar Das* (192-) 6 Lah 310 88 I C 872 (-) A L 491

(e) *Vira* ... v ... *ayyangar* (1882) 4 Mad 381 *Venkatachellam* v ... *Audian* (1881) 3 Mad 3.. *Chinnathambi Murugesa* v ... (1901) 24 Mad 421 *Ramaswami* v *Tirupathi* (1904) .. Mad 4..

(f) *Venkatasami* v *Subba* (1911) 34 Mad 90 6 I C 382 reversing (1910) 33 Mad 216 4 I C 3 3

Act (*g*), but this decision has been superseded by sec 5 of the Transfer of Property (Amendment) Act, 1904 (6 of 1904), whereby a proviso was added to sec 107 of the Transfer of Property Act See para "Leases under the Transfer of Property Act" on p 63 above **S. 17 (1) (d)**

Notification issued before Registration Act of 1908.—A notification issued under the proviso in 1885 will be deemed to be in force even after the passing of the Registration Act of 1908, by virtue of the provisions of sec 24 of the General Clauses Act 10 of 1897 unless it is modified or cancelled by the Registration Act of 1908 (*h*)

Miscellaneous cases relating to leases

Tenancy at will.—A tenancy at will is where lands or tenements are let by one man to another, to hold at the will of the lessor, in this case the lessee is called a tenant at will, because he has no certain or sure estate, for the lessor may put him out at any time he pleases Either party may at any time determine a strict tenancy at will although expressed to be held at the will of the lessor only, and the landlord may determine it by a demand of possession or otherwise without a previous formal notice (*i*)

Illustration

A takes a lease of *B*s lands upon the following terms —"I have taken the land for cultivation for the current year from you I shall go on paying the assessment from year to year so long as I cultivate the lands I shall deliver the said lands without any objection at any time you may ask me to vacate and deliver the same to you" The writing creates a tenancy at will *Pandu* v *Shrishankardas* (1929) 31 Bom L R 335, 118 I C 702, *Narayan* v *Shrishankardas* (1932) 34 Bom L R 959, 139 I C 258, ('32) A B 493 See also Illustration under the heading "Lease reserving a yearly rent" on p 69 above

Relinquishment by tenant to land-holder.—An instrument by which a tenant in a zamindari, in consideration of the zamindar waiving his right to arrears of rent accrued due, relinquishes the land to him, requires registration under sec 17 (1) (b), as it purports to extinguish the tenant's interest in the land (*j*)

Endorsement by landlord evidencing his assent to assignment of lease.—An endorsement by a landlord on the lease evidencing his assent to the assignment by the lessee of his interest in the lease does not create an interest in immoveable property within the meaning of sec 17 (1) (b), and does not require registration (*k*)

(*g*) *Laravananda* v *Miyakan* (1898) 21 Mad 109

(*h*) *Hazari* v *Tirbani* (1914) 12 All L J 792 28 I C 577

(*i*) Woodfall 21st ed, pp 280 281

(*j*) *Rangayya* v *Kameswara* (1897) 20 Mad 367

(*k*) *Chengiah* v *Kalahasti* (1910) 20 Mad L J 555, 564, 6 I C 766

S. 17 (1) (d)

Auction of right to a lease.—The acceptance of a bid at an auction of a farm of the rents of a village does not operate as an agreement of lease until a muchalka is executed In the absence of a muchalka there is no agreement which requires registration (*l*)

Landlord s reversion.—See notes to sec 17 (1) (b) under the same head on p 58 above

Unregistered lease and compensation for use and occupation Though a landlord cannot recover rent under an unregistered lease which requires registration he is entitled to sue for compensation for use and occupation of the land purported to be demised (*m*)

Variation of lease.—A lease may be varied in respect of its essential terms or it may be varied in respect of rent only A document which varies the essential terms of an existing lease, such as the amount of rent, the time of payment thereof, and the consequences of default, amounts to a fresh lease and it must be registered as a lease (*n*) This is settled by the decision of the Privy Council in *Durga Prasad Singh v Rajendra Narain Singh* (*o*) confirming a decision of the Calcutta High Court (*p*) that an agreement to reduce rent is inadmissible in evidence to vary the terms of the lease The Calcutta High Court distinguished its previous decision in *Satyesh Chunder v Dhunpal Singh* (*q*) which appeared to take the opposite view on the ground that the agreement had been admitted by the lessor in a previous suit Doss, J further observed "If it were open to the parties to alter any of the terms or incidents of a lease by an unregistered instrument, it seems to me that the result would be that they would be capable of altering everyone of *the terms of the lease by* separate unregistered documents, so that all the incidents of the original lease would vanish, and the rights of the parties and the incidents of the lease would be regulated entirely by unregistered documents This inevitable consequence has been very forcibly emphasized by Bramwell, B, with reference to the analogous provisions in the Statute of Frauds in *Sanderson v Graves* (*r*), where he said: "Unless a note in writing is necessary in every case of alteration, it is required in none, so that in the name of alteration, something wholly different might be established"

The Madras High Court held following *Satyesh Chunder's* case that an agreement varying the amount of rent did not require registration (*s*)

(*l*) *Dorikee Panda v Sri Ramchandra* (1933) M W N 818

(*m*) *Lurrevs v Prollad* (1869) 12 W R 289

(*n*) *Lalit Mohan v Gopali* (1912) 39 Cal 284, 297, 12 I C 723 [F B], *Biraj v Kedar Nath* (1908) 35 Cal 1010, 1012, *Mahomed Din v Sardara* (1934) 148 I C 578 (34) A L 743

(*o*) (1914) 40 I A 223 41 Cal 493, 21 I C 750

(*p*) *Durga Prasad v Rajendra Narain* (1910) 37 Cal 293, 302, 4 I C 713 See also *Biraj v Kedar Nath* (1908) 35 Cal 1010

(*q*) (1897) 24 Cal. 20 followed in *Harda Prasad v. Ram Narain* (1909) 11 Cal L J 22 2 I C 69

(*r*) (1875) L R 10 Ex 234

(*s*) *Obee v Ramalinga* (1899) 22 Mad 217, 220

S. 17 (1) (d), (e)

But this was before the Privy Council decision in *Durga Prasad's* case and all the High Courts have held that registration is necessary of an agreement which reduces the rent of an existing registered lease (*t*). So also in the case of an agreement which provides for the payment of an enhanced rent (*u*).

It may here be observed that if, whilst a tenant from year to year is in possession of lands under an agreement reserving a certain rent, he agrees with his landlord to pay an increased or reduced rent, this will not necessarily have the effect of creating a new tenancy (*v*). But this does not affect the question of registration considered above, and the Calcutta High Court has held that a compromise varying the terms of a lease, though not itself a lease, would have required registration but for the fact that it was embodied in a decree for rent (*w*).

Specific performance of unregistered agreement for lease.—See note under sec. 49 under the same heading.

Damages for breach of unregistered agreement for lease.—See note under sec. 49 under the same heading.

SEC. 17 (1) (e)—TRANSFER OF DECREE OR ORDER OR AWARD.

Sec. 17 (1) (e).—Transfer of decree or order or award.—Clause (e) is new. It was added by sec. 10 of the Transfer of Property (Amendment) Supplementary Act, 1929 (21 of 1929). This clause provides that a transfer of a decree or order of a Court or of any award when such decree or order or award operates to create, declare, etc., any interest of the value of Rs. 100 and upwards in immoveable property, requires registration. Before the amendment there was a conflict of opinion whether an assignment of a mortgage decree for Rs. 100 or upwards required registration under sec. 17 (1) (b). It was held by the High Court of Bombay that it did, the reason given being that the assignment gave the assignee the right to sell the immoveable property covered by the decree and the right to sell immoveable property was a right to or interest in such property (*x*). It was also held by the same High Court

(*t*) *Lalit Mohan v. Gopali Chuck* (1912) 39 Cal. 284: 12 I.C. 723; *Bogha v. Ram Lakhan* (1917) 27 Cal. L. J. 107, 41 I.C. 804; *Dat v. Gopal* (1916) 14 All. L. J. 57, 34 I.C. 234; *Rampadarath v. Sohrai* (1919) 4 Pat. L. J. 667, 672, 52 I.C. 20; *Attar Chand Kapur & Sons v. Chanda Lal* (1929) 10 Lah. 685, 117 I.C. 240 (29) A.L. 291.

(*u*) *Bogha v. Ram Lakhan* (1917) 27 Cal. L. J. 107, 41 I.C. 804; *Attar Chand Kapur & Sons v. Chandu Lal* (1929) 10 Lah. 685, 117 I.C. 240 (29) A.L. 291; *Kedarnath v. Surendro* (1884) 9 Cal. 865, 868 does not seem to be good law.

(*v*) *Doe d. Monck v. Geckie* (1844) 5 Q.B. 841; *Crowley v. Vitty* (1852) 7 Ex. 319; *Inchiquin (Lord) v. Lyons* (1887) 20 L. R. Ir. 474.

(*w*) *Jaynal v. Hyderali* (1928) 55 Cal. 701: 111 I.C. 340, (28) A.C. 441 followed in *Shaila Bala v. Ganga narayan* (33) A.P. 457.

(*x*) *Gopal v. Trimbak* (1876) 1 Bom. 267.

S. 17 (1) (e)-(2) (i)

that if the assignment was not registered the assignee could not execute even that part of the decree which reserved liberty to the mortgagee to proceed against the person or other property of the mortgagor in the event of the net sale proceeds of the mortgaged property being insufficient to pay the mortgagee's claim in full (*y*) On the other hand it was held by the High Courts of Calcutta (*z*) and Allahabad (*a*) that such an assignment did not require registration the reason given being that the assignment was not of any immoveable property but of the decree itself, and the decree could in no sense be regarded as immoveable property and further, that the assignment did not of itself create an interest in the property The new clause (e) gives effect to the Bombay view

SEC. 17 (2)

"Nothing in clauses (b) and (c) of sub section (1) applies to" — By sec 17 it is provided that the non testamentary documents mentioned in cls (b) and (c) must be registered This is subject to the exceptions provided in sub sec (2) of sec 17 Note that the documents mentioned in sub sec (2) are excepted from the operation of cls (b) and (c) only and not cl (a) which relates to gifts or cl (d) which relates to leases The reason is that the documents enumerated in the various clauses of sub sec (2) come within the description of documents in cls (b) and (c) only, and not within the description of documents in cls (a) and (d) (*b*)

SEC. 17 (2) (i)—COMPOSITION-DEEDS.

Earlier Registration Acts —Composition deeds were first exempted from registration by Act 20 of 1866

Act 3 of 1877, sec 17 (e) —This clause corresponds with cl (e) of sec 17 of Act 3 of 1877

Composition deed —A composition deed as defined in art 22 of Sch I to the Indian Stamp Act 2 of 1899 includes any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors or whereby payment of a composition or dividend on their debts is secured to the creditors It is not necessary that the creditors should have

(*y*) *Heptulla v Mahomed* (1909) 11 Bom L R 36 2 I C 711

(*z*) *Gous v Khatems* (1896) 23 Cal 450 *Baij Nath v Binayendra* (1901) 6 Cal W N 5, *Ratan v Jogesh Chandra* (1907) 12 Cal W N 62

(*a*) *Abdul Majid v Muhammad* (1890) 13 All 89 91 *Mumta v Shri Ram* (1913) 35 All 524 21 I C 462

(*b*) *Hemanta Kumari Debi v Midnapur Zamindari Co* (1915) 19 Cal W N 317 324 25 I C 870, s c on appeal to P C [illegible] 47 Cal 485 495 46 I A [illegible] 245 246 53 I C 531 (19) [illegible] 79, *Raju Balu v Krishnarao* [illegible] 2 Bom 273 297 *Mal* [illegible] *Manilal* (1904) 28 Bom 304, [illegible]

agreed to accept *less* than the amount due to them. It is sufficient if by the deed the debtor conveys his property for the benefit of his creditors. This definition has been held by the High Court of Bombay to apply to composition deeds under this clause (c). Where trustees are appointed under a composition deed, and the property is conveyed to them for the benefit of the creditors, the deed still retains its character of a composition deed, and does not require registration as a deed of trust under sec. 5 of the Indian Trusts Act 2 of 1882 (*d*). In a recent Madras case (*d*1) a debtor entered into an agreement with his creditors in which every possible kind of arrangement was made including a final residuary right of suit, in order to ensure payment in full to the creditors. It was held that such an agreement, which expressly contemplated payment in full to the creditors was not a composition deed. **S. 17 (2) (i)-(v)**

SEC. 17 (2) (ii)—SHARES.

This clause corresponds with sec. 17 (e) of the Registration Act 3 of 1877. It first appeared in the Registration Act 20 of 1866.

SEC. 17 (2) (iii)—DEBENTURES.

This clause corresponds with sec. 17 (ff) of the Registration Act 3 of 1877. It was first inserted by the Amending Act 7 of 1886, sec. 2.

Debentures creating an interest in immoveable property must be registered (*e*).

SEC. 17 (2) (iv)—TRANSFER OF DEBENTURES.

This clause corresponds with sec. 17 (g) of the Registration Act 3 of 1877. It first appeared in the Registration Act 20 of 1866.

SEC. 17 (2) (v)—DOCUMENT MERELY CREATING A RIGHT TO OBTAIN ANOTHER DOCUMENT.

Act 3 of 1877, sec. 17 (h).—This clause corresponds with sec. 17 (h) of the Registration Act 3 of 1877. The documents described in this clause were first exempted from registration by the Act of 1877 (*f*). The exemption did not appear in any of the earlier Registration Acts, namely Act 16 of 1864, Act 20 of 1866 and Act 8 of 1871.

Document merely creating a right to obtain another document.—This clause provides that a document *not itself* creating a right in immoveable property of the value of Rs. 100 and upwards, but *merely* creating,

(c) *Chandrashankar* v. *Bai Magan* (1914) 38 Bom. 576, 24 I.C. 730, dissenting from *Shekh Adam* v. *Chandrashankar* (1912) 14 Bom. L. R. 506, 15 I.C. 850; *Subbaraya* v. *Vythilinga* (1893) 16 Mad. 85, 89.

(d) *Malukchand* v. *Manilal* (1904) 28 Bom. 364.

(d1) *Official Assignee of Madras* v. *Subba Rao* ('34) A.M. 697.

(e) *Imperial Bank of India, Ltd.* v. *Bengal National Bank* (1930) 57 Cal. 328, 127 I.C. 760, ('30) A.C. 536.

(f) *Raju* v. *Krishnarav* (1878) 2 Bom. 273, 282.

S. 17 (2) (v) a right to obtain another document which will, when executed, create any such right need not be registered. An agreement for sale in the usual form acknowledging receipt of earnest, and providing for the execution of a regular sale deed on payment of the balance of the purchase money, is a document of this kind (see the Explanation at the end of sub sec (2)). The present clause, as stated above, did not appear in the Registration Acts of 1864, 1866 and 1871. It was introduced for the first time by sec 17 of the Registration Act 3 of 1877 as cl (h). To understand the history of this clause let us take an illustration based upon the facts of the Privy Council case of *Lalla Chand Sahu v. Lilambar Singh Das* (g).

A executes a writing whereby he agrees to sell certain land to *B* for Rs 22,500. *B* pays Rs 7,500 as earnest. *A* acknowledges receipt of Rs 7,500 in the writing itself, and agrees to execute a deed of sale of the land to *B* on payment of the balance. *A* fails to execute the sale deed. *B* sues *A* for specific performance. The writing is not registered. Is it admissible in evidence not being registered?

Upon these facts it was held by the Judicial Committee that the document required registration under cls (2) and (3) of the Registration Act 20 of 1866 corresponding with cls (b) and (c) of the present section, and, not being registered, it was not admissible in evidence. Their Lordships said: "The Registration Act recently passed in India is extremely stringent. Their Lordships have, in the first place, no doubt whatever that the instrument in question is one which, by the 17th section of the Act, is required to be registered; that it is an instrument acknowledging the payment of the consideration money for what was to be ultimately an absolute sale of the property in question, for *what in equity did presently operate as a sale of the property*." The latter observation refers to the principle of English law according to which a contract for sale of land operates in equity as a transfer of ownership from the vendor to the purchaser. It appears from the said observation as well as the observations of their Lordships in another case (*h*) that this principle of English law applied in their Lordships' opinion also in India with the result that the agreement for sale was regarded as an instrument *itself creating* an interest in immoveable property and also as an instrument acknowledging the receipt of consideration on account of the creation of such interest within the meaning of cls (2) and (3) of the Registration Act of 1866, corresponding with cls (b) and (c) of the present section. As a result of this decision of the Privy Council the Courts of British India held that every agreement for sale of immoveable property of the value of Rs 100 and upwards which acknowledged the receipt of earnest or of part payment of the purchase money (i)

(g) (1871) 6 Beng. L. R. 433, 438, 14 M I A 129, 16 W R P C 26.

(h) *Lala Chunilal v. Saraichand* (1835) 5 W R P C 111.

(i) *Balaji v. Thomas* (1876) 1 Bom 190, 194 193; *Joy Ram v. Kalee* (1873) 20 W R 291; *Sreenath v. Nillanto* (1874) 22 W R 309.

and every receipt though not contained in an agreement of earnest or of part payment or full payment of the purchase money (j) required registration under sec 13 of the Registration Act of 1864 and sec 17 of the Registration Acts of 1866 and 1871 **S. 17 (2) (v)**

But the law has been altered since the enactment of sec 17 (h) of the Registration Act 3 of 1877 which corresponds with the present cl (v) In discussing the reasons for the change Birdwood J said in *Chunilal v Bomanji* (k) as follows — The reasons for clause (h) were explained in the Legislative Council when the changes in the former law were under consideration I refer to the debates in Council not for the purpose of interpreting the present Act which must be construed on a consideration of the language actually used in it but only to ascertain what as a matter of fact was the object which the Legislature had in view In introducing the Bill which was subsequently passed as Act III of 1877 Sir C Hobhouse explained that under the proposed addition to section 17 it would not be necessary to register an agreement to execute a conveyance of land The agreement he remarked 'would give the owner of it *no absolute right to the land*, and if before he got his conveyance another person took a conveyance and registered it acting honestly the agreement would be displaced And when certain amendments were moved Mr Cockrell said that the direct object of this provision was to save a person from having to register two deeds in relation to the same subject matter executed for the purpose of giving effect to a single transaction regarding it It appears therefore that the framers of the *present Act intended that the registration of such a document as the bargain* paper in the present case should not be compulsory I think that effect has been given to that intention sufficiently if not very clearly by the language used in clause (h) of section 17 of Act III of 1877 A document is apparently within the exception if it does not itself by its express terms create a certain interest in immoveable property, but expressly contemplates the creation of that interest by a subsequent document The exception seems to apply to a contract of sale and purchase of which a Court of Equity would only under certain circumstances decree a specific performance And the decision of the Privy Council in *Fatteeland*'s case cannot apparently now be held to govern such a case as the present

It is clear from the proceedings of the Legislative Council referred to above that the framers of the Act did not adopt the view that an agreement for sale comprising a receipt of earnest or part payment operated as a *present* transfer of the property The Legislature in 1882 discarded the English doctrine of equitable ownership in the Transfer of Property Act, 1882, and the Indian Trusts Act, 1882 This clause is in accordance with the provisions of

(j) *Raman* v *Dhondiba* (1880) 4 Bom 126 137 138 140 141

(k) (1884) 7 Bom. 310 315

S. 17 (2) (v) sec 54 of the Transfer of Property Act 4 of 1882 which declares that ' a contract for the sale of immoveable property does not *of itself* create any interest in or charge on such property (*l*) The result is that in cases governed by the Registration Act 3 of 1877 or by the present Act, an agreement for sale of immoveable property is exempted from registration, though it may contain an acknowledgment of the receipt of earnest or of part payment of the purchase money (*m*) There are however, two decisions, both under the Registration Act of 1877, one of West J, in *Burjorji* v *Mancherji* (*n*) and the other of the Madras High Court in *Ramasami* v *Panasami* (*o*) in which the Court took the same view of an agreement for sale as was done by the Privy Council in *Fati Chand's* case Both these decisions were prior to the judgment of Birdwood J, in *Chunilal's* case The principle of the decision in *Chunilal's* case was followed in India in a series of cases In an appeal case, however from India (*p*) the Privy Council held that the effect of sub sec (6) (b) of sec 55 of the Transfer of Property Act 1882 was that a purchaser of land who had paid earnest money could not sue for specific performance of the contract unless the contract was registered The reason given was that in such a case the contract *in itself* created an interest in land and consequently was not within the exception in sec 17 (2) (v) of the Registration Act This ruling was manifestly inconsistent with the practice prevailing in India and it threatened to nullify the exemption contained in sec 17 (2) (v) To remove doubts which were created by the Privy Council decision the Explanation at the end of sub-sec (2) was added by sec 2 of the Indian Registration (Amendment) Act, 1927 The Explanation is retrospective (*q*) so that a

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(*l*) Sec 13 of the Specific Relief Act I of 1877 passed in the same year as the Registration Act 3 of 1877 seems to follow the rule of English law

(*m*) *Chunilal* v *Bomanji* (1883) 7 Bom 310 *Hormusji* v *Keshav* (1894) 18 Bom 13 *Shridhar* v *Chintaman* (1894) 18 Bom 396, *Patel Ranchod* v *Bhikhabhai* (1897) 21 Bom 704 *Sayad Mir* v *Maya Ali* (1914) 38 Bom 703 708 28 I C 132 *Sreegopal* v *Ram Churn* (1882) 8 Cal 856 858 *Pertab Chunder* v *Mohendranath* (1890) 17 Cal 291 297 16 I A 233, *Hurnundan Singh* v *Jawad Ali* (1900) 27 Cal 468 *Partab Singh* v *Karm Chand* (1884) Punj Rec No 184 [F B] *Imam Bakhsh* v *Karim Singh* (18[illegible]) Punj Rec No 16 *Sirya* v *Nathu* (19[illegible]) Punj Rec No 174 *Sharaf Ali* v *Jagandar* (1916) Punj Rec No 98 p 296 37 I C 132 *Chuttan Lal* v *Mul Chand* (1917) Punj Rec No 18 p 66 44 I C 732 *Indar Singh* v *Munshi* (1920) 1 Lah 124 126 56 I C 272, *Lachhman Das* v *Bhoja Ram* (1924) 6 Lah L J 554 84 I C 865 (25) A L 284 *Inder Singh* v *Dyee Singh* (1926) 6 Lah 447, 89 I C 60[illegible] (2[illegible]) A L 619

(*n*) (1881) 5 Bom 143

(*o*) (1882) 5 Mad 115 See also *Adalalan* v *Theethan* (1889) 12 Mad 507

(*p*) *Dayal Singh* v *Indar Singh* (1926) 28 Bom L R 1372 53 I A 214 98 I C 568 (26) A I C 94

(*q*) *Nayarlashi Lamil* v *Meghnath Mashan* (1931) 58 Cal 419 129 I C 831 (31) A C 171

contract of sale of immoveable property does not require registration by reason only of the fact that it contains a recital of the payment of any earnest money or of the whole or any part of the purchase money Such a contract falls within sec 17 (2) (v) and a suit will lie for specific performance of the contract as it did before the Privy Council decision whether the contract was made before or after the enactment of the Explanation *See* note at p 103 sec 17 (2) Explanation— Recital of payment of earnest money **S. 17 (2) (v)**

Illustrations

(1) An agreement for sale is in these terms There is a house situated in——Street *B* has agreed to sell the house to *C* on condition of receiving Rs 15 225 as the value thereof And *C* has agreed to purchase the said house The conditions thereof are as follows The said *C* did at the time of executing this bargain paper pay to the said *B* Rs 1 000 as earnest money the receipt of which sum the said *B* admits by this writing On a deed of sale being made out and on the said house being made over to *C* the balance of Rs 14 225 is duly to be paid The document does not itself create any interest in immoveable property but creates merely a right to obtain another document namely a deed of sale It falls within sec 17 (2) (v) and does not require registration *Chunilal* v *Bomanji* (1883) 7 Bom 310

(2) A document containing a promise to transfer a portion of property under litigation if decreed in favour of the executant comes within sec 17 (2) (v) and does not require registration *Indar Singh* v *Munshi* (1920) 1 Lah 124 57 I C 272

(3) An ikrar (agreement) to the effect that the tenants will sign and have registered kabuliyats at rents expressed in the ikrar fall within sec 17 (2) (v) *Pertab Chunder* v *Mohendranath* (1890) 17 Cal 291 297, 16 I A 233 238

(4) By an agreement in writing *A* agrees to finance *B* to the extent of Rs 15 lacs The agreement provides that all stock in trade belonging to *B* shall be under hypothecation to *A* and that *B* shall as soon as possible execute in favour of *A* a regular deed of mortgage of certain lands belonging to *B* to secure the loan The agreement falls within sec 17 (2) (v) and does not require registration *Sir Hukumchand* v *Radha Kishen* (1930) 32 Bom L R 533 123 I C 157 (30) A PC 76

Agreement of sale —See notes Document merely creating a right to obtain another document on p 75 above

Agreement of mortgage —An agreement by a debtor to execute a mortgage of his immoveable property to his creditor does not itself create an interest in immoveable property but merely creates a right to obtain a deed of mortgage from the debtor Such an agreement falls within sec 17 (2) (v),

S. 17 (2) (v)

and does not require registration (*r*) If, however the agreement is intended to operate as a charge it falls within sec 17 (1) (b) and requires registration (*s*)

Agreement to execute a release—Such an agreement also comes within sec 17 (2) (v) and does not require registration (*t*)

Agreement for partition—Such an agreement falls within sec 17 (2) (v) and does not require registration (*u*)

Agreement recording a past transaction and providing for the making of a formal document—Such an agreement falls within sec 17 (2) (v) and does not require registration (*v*)

Agreement to make a gift—Sub sec (2) begins with the words, nothing in clauses (b) and (c) shall apply to It does not include cl (a) which relates to gifts Therefore, an agreement to make a gift does not come under cl (v) The reason why it is excluded seems to be that under sec 25 (1) of the Indian Contract Act 1872, a promise to make a gift is void for want of consideration unless it is in writing and *registered* and is made on account of natural love and affection between parties standing in a near relation to each other

Agreement to lease—An agreement for lease may create a present demise or it may not It has been held by the Privy Council in *Hemanta Kumari Debi* v *Midnapur Zamindari Company* (*w*) that an agreement to lease is a lease within the meaning of sec 2 (7), and requires registration as such only if it creates a present demise It has also been held by Jenkins C J in *Panchanan* v *Chandi Charan* (*x*) that if an agreement to lease does not create a present demise it is a document coming under cl (v) of sub sec (2) In *Pertab Chunder's* case, cited as ill (3) in the notes ' Document merely creating a right to obtain another document, on p 75 above the agreement was really one for a lease and it was held to come under cl (v) In *Hemanta Kumari Debi's* case the Judicial Committee though they approved of the decision of Jenkins C J did not refer to or rely on cl (v) anywhere in their judgment Sub sec (2) begins with the words nothing in clauses (b) and (c) of sub-section (1) applies to It excludes cl (a) which

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(*r*) *Konchadi* v *Shiva Rao* (1905) 28 Mad 74 35 *Meenakshisundara* v *Rathnaswami* (1918) 41 Mad 959 976 977 49 I C 291

(*s*) *Tirthdas* v *Sidasingh* (1923) 25 Bom L R 313 73 I C 296 (1923) A B 287

(*t*) *See Raja Dinati Looru* v *Kurlajuthi* (1916) 30 Mad L J 302 306 32 I C 311

(*u*) *Rajangam Iyyar* v *Rajangam Iyyar* (1923) 46 Mad 373 50 I A 134 69 I C 123 (1922) A P C 266 *Ramachandrachariyulu* v *Rangachariyulu* (1926) 51 Mad L J 418 98 I C 339 (1926) A M 1117

(*v*) *Narasimha Swami* v *Venkatalingam* (1927) 50 Mad 687 103 I C 312 (1927) A M 633

(*w*) (1919) 47 Cal 485 46 I A 240 53 I C 531 on app from s c in (1914) 19 Cal W N 317 25 I C 879

(*x*) (1910) 37 Cal 808 811 6 I C 413.

S. 17 (2) (v)

relates to gifts and cl (d) which relates to leases Hence it has been said that an agreement to grant a lease whether it creates a present demise or not does not come under cl (v) and that this was overlooked by Jenkins, C J, in his judgment in the above case (y) However that may be, it is clear that an agreement to lease which does not create a present demise is not a lease and is not subject to compulsory registration under clause (d), and as it does not declare or create an interest in the property it does not fall under clause (b)

Document itself creating a right in immoveable property.— Cl (v) applies only to a document which *does not itself* create a right in immoveable property It does not apply to a document which itself creates such a right Documents of the latter class must be registered if the right is of the value of Rs 100 or upwards (z) Whether a document belongs to the former class or the latter class depends upon the intention of the parties as expressed in the instrument (a) If the document itself creates an interest in immoveable property, the fact that it contemplates the execution of another document will not exempt it from registration under this clause

Illustrations

(1) By a *kararnama* (agreement) made in June 1885 *A* delivers possession of a house to *B* in consideration of *B* undertaking to pay off the debts due by *A*'s father amounting to Rs 150 It is further provided that if *A* failed to repay the amount by 1888 *A should pass a deed of sale of the house to B.* The document requires registration It does not *merely* create a right to obtain another document It creates as between the parties to it a charge in the nature of a mortgage, the transfer of the house being contemporaneous with the execution of the document The mention of an intention to execute a deed of sale can make no difference, as the document does not *merely* create a right to demand another document The document not being registered *B* cannot claim the house under it *Vani* v *Bani* (1896) 20 Bom 553

(2) *A* passes a receipt to *B* in these terms "Rs 322-8 0 in all was due to us including Rs 100 being the price of your two houses which are with us by reason of purchase, you have paid us the said sum of Rs 322-8 0 Now up to-date nothing is due to us by you Should there be any khata

(y) See *Hemanta Kumari Debi* v *Midnapur Zamindari Company* (1914) 19 Cal W N 347, at pp 350 351, 28 I C 879 See also *Jamjadarath* v *Sohrai* (1919) 4 Pat L J 667, 672 52 I C 20, a lease under sec 17 (2) (vi)

(z) *Purnasami* v *Ramasami* (1882) 5 Mad 115, *Vani* v *Bani* (1896) 20 Bom 553, *Parashram* v *Ganpat* (1897) 21 Bom 533, *Lakshmamma* v *Kameswara* (1890) 13 Mad 281, *Perhmeshri* v *Autar Singh* (1921) 3 Lah. L.J 173 67 I.C 144, (21) A L. 113.

(a) *Mangamma* v *Ramamma* (1914) 37 Mad. 480, 482, 16 I C 587, *Sheikh Elahi* v *Sheikh Hukum* (1913) 18 C W N 38, 20 I.C. 907

S 17 (2) (v) and does not require registration (r) If, however, the agreement is intended to operate as a charge, it falls within sec 17 (1) (b) and requires registration (s)

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(t) *See Laya Dinta Lemu v Kanli jethi* (1916) 30 Mad L J 59 358 32 I C 511

(u) *Rajangam Iyyar v Rajangam Iyyar* (1923) 46 Mad 373 50 I A 134 69 I C 123 (1922) A PC 266 *Ramachandracharyulu v Ranga charyulu* (1926) 51 Mad L J 418 98 I C 39 (1926) A M 1117

(v) *Narasimha Swami v Venkatalingum* (1927) 50 Mad 687 103 I C 392 (1927) A M 631

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Document itself creating a right in immoveable property.— Cl (v) applies only to a document which *does not itself* create a right in immoveable property It does not apply to a document which itself creates such a right Documents of the latter class must be registered if the right is of the value of Rs 100 or upwards (z) Whether a document belongs to the former class or the latter class depends upon the intention of the parties as expressed in the instrument (a) If the document itself creates an interest in immoveable property, the fact that it contemplates the execution of another document will not exempt it from registration under this clause

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(a) *Maigamma* v *Pamamma* (1914) 37 Mad 480 482 16 I C 587, *Sheikh Elahi* v *Sheikh Hukum* (1913) 18 C W N 38, 20 I C 907.

S. 17 2) (v) or bond the same is to be deemed as cancelled *We have no longer any interest remaining in any way in the aforesaid two houses We shall execute to you a new sale-deed* on a stamp (paper)" The document requires registration It does not *merely* create a right to obtain another document Farran C J said ' To us it appears to create or declare or extinguish at once a right to the property with a superadded covenant to execute a stamped document to the same effect—another sale deed stamped—on a future occasion Manifestly it requires registration" The document not being registered cannot operate as a re sale of the property from *A* to *B* *Parashram* v *Ganpat* (1897) 21 Bom 533 535

(3) A writing passed by *A* to his adoptive mother is in these terms As my father died what we intend in regard to division of moveable and immoveable property which was acquired by him and which we hold up to the present day is as follows —I have given you without any share to me the inam lands which were previously purchased in Vijaiswaram, the silver, and gold jewels of which you hold possession as also the jewels which my father had I have arranged that I shall hold without giving you any share in the silver and gold articles which are in my possession as also the seri lands which stand in my name and in that of Suraparazu It is arranged that after we divide the property above referred to and take possession of our respective shares *a document shall be drawn up and registered* The mother sues *A* upon this document to compel *A* to execute in her favour deeds of transfer of the moveable and immoveable properties The document requires registration under sec (17) (1) (b) It is not a document *merely* creating a right to obtain another document The Court said The language of the document expressly declares existent rights in the plaintiff in immoveable property, and though the last clause contemplates the execution of another deed it is clear that that future deed was only necessary because there was a certain amount of property as to which immediate division was not possible ' *Lakshmamma* v *Kameswara* (1890) 13 Mad 281 285

Pre emption —There is a conflict of opinion whether an agreement providing that if one of the parties thereto wished to sell his property or his *share of the property the other party should have a right to pre empt* is a document which creates of itself any interest in immoveable property, or a document merely creating a right to obtain another document It has been held in Madras (*b*) and Bombay (*c*) that such an agreement does not stand on a higher footing than an agreement to sell immoveable property, and does not of itself create any interest in such property On the other hand it has been held by the High Court of Allahabad that it does of itself

(*b*) *Ramasami* v *Chinnan* (1901) 24 Mad 449 461

(*c*) *Tribhuvan* v *Lalu Khushal* (1923) 47 Bom. 283 73 I C. 666 (23) A B 226

create an interest in immoveable property, and therefore requires registration (d) The Allahabad decision, it is submitted, is not correct S. 17 (2) (v)

Specific performance—Sec 17 (2) (v) provides that a document not itself creating a right in immoveable property of the value of Rs 100 and upwards, but merely creating a right to obtain another document which will, when executed, create any such right need not be registered It has been seen in the preceding paragraph that when a document *itself* creates such a right in immoveable property it is not excepted from registration by virtue of cl (v) because it also contemplates the execution of another document It was, however, held in the Bombay case of *Burjorji* v *Muncherji* (e) and in earlier cases in Madras (f) and Calcutta (g) that although as creating a right in land such a document was not admissible in evidence, it might nevertheless be used for the purpose of obtaining specific performance In later cases (h), however it was held that a document which *itself* creates an interest in immoveable property of the value of Rs 100 and upwards and is inadmissible for want of registration under sec 49 cannot be admitted in evidence to prove the agreement to transfer said to be contained therein These decisions were approved by the Privy Council in *Skinner* v *Skinner* (i) The Privy Council said that to allow a document which does itself create an interest in immoveable property to be used as a foundation for a suit for specific performance appears to their Lordships to be little more than an evasion of the Act In this case the vendor sued for specific performance and for possession But if possession has been given, this statement of the law must be read subject to the doctrine of part performance Section 27A inserted in the Specific Relief Act 1877, by the amending Act, 21 of 1929, expressly allows a lease which is inadmissible for want of registration to be used as evidence of the contract to lease in a suit for specific performance This section also supersedes *Sanjib Chandra* v *Santosh Kumar* (j) where Rankin, C J, held that an agreement of lease inadmissible as evidence of

(d) *Kashi Kunbi* v *Sumer Kunbi* (1910) 32 All 206 5 I C 234

(e) (1881) 5 Bom 143

(f) *Adaikkalam* v *Theethan* (1889) 12 Mad 505, 507, *Nagappa* v *Devu* (1891) 14 Mad 55 *Mangamma* v *Ramamma* (1914) 37 Mad 480 16 I C 587

(g) *The Bengal Banking Corporation* v *Mackertick* (1884) 10 Cal 315

(h) *Sanjib Chandra* v *Santosh* (1922) 49 Cal 507 69 I C 877, (22) A C 436 (agreement to lease) *Ramling* v *Bhagwant* (1926) 50 Bom 334 96 I C 334, (26) A B 375 (sale), *Satyanarayana* v *Chinna Venkata Rao* (1926) 49 Mad 302 (26) A M. 530 (sale), *Parmeshri* v *Autar Singh* (1921) 3 Lah L J 173 178 67 I C 144 (21) A I 113, *Diwan Singh* v *Garbachan Singh* (1932) 137 I C 41 (32) A L. 276

(i) (1929) 56 I A 363 33 C W N 1150, 119 I C 633 (29) A. PC 269, explained in *Sohan Lal* v *Atal Nath* (1933) 31 All. L. J 1584, (33) A A 846 and in *Jagannadha* v *Lakshminarayana* (1930) 58 Mad L. J 688 125 I C. 549, (30) A M. 683

(j) (1922) 49 Cal 507 69 I C. 877, (22) A C 436

S. 17 (2) (v), (vi) a lease for want of registration could not be put in evidence in a suit for specific performance although the lessee had taken possession under the agreement. But the proviso added to sec. 49 by the same amending Act seems to go further and enacts (apparently irrespective of part performance) that an unregistered document affecting immoveable property though required to be registered may be admitted as evidence of a contract in a suit for specific performance. This provision seems to supersede *Skinner* v. *Skinner* (k) which was decided three months earlier. See in this connection the notes to sec. 49.

Unregistered agreement for sale followed by attachment of the property. – *A* agrees to sell certain immoveable property to *B*. The agreement is not registered. Before the conveyance is executed, *C*, a creditor of *A*, attaches the property, and the property is sold in execution to *D*. *Held* that the unregistered agreement did not create any interest in the property so as to entitle *B* to priority over *D*. The agreement merely entitled *B* to call for a conveyance of the property (l). See notes to this clause. "Document merely creating a right to obtain another document," on p. 75 above.

Mortgage by conditional sale.– See note under sec. 17 (1) (b) "Whether a transaction amounts to a mortgage by conditional sale or to a sale with a right of re-purchase," on p. 39 above.

SEC. 17 (2) (vi)—DECREES AND AWARDS.

Registration of decrees and awards under the earlier Registration Act. —The Registration Act 16 of 1864 and Act 20 of 1866 contained specific provisions for the registration of decrees and orders of Court. By sec. 43 of the Act of 1864 and sec. 41 of the Act of 1866 it was provided that when any Civil Court should by a decree or order declare any document relating to immoveable property, which should have been registered, to be invalid, or when any Civil Court should pass a decree or order affecting any such document, and such last mentioned decree or order should create, declare, transfer, limit or extinguish any right, title or interest under such document to or in the immoveable property to which it relates, such Court should cause a memorandum of the decree or order to be sent to the Registrar within whose district the document was originally registered. These sections were not re-enacted in the Registration Act 8 of 1871. But when the Specific Relief Act was passed in 1877, it was provided by sec. 39 of that Act that where an instrument is adjudged void or voidable under that section and ordered to be delivered up and cancelled, the Court should send a copy of its decree, if the instrument has been registered under the Registration Act,

(k) *Skinner* v. *Skinner* (1929) [illegible] 3?3 [illegible] I. C. 673 (1929) A. I. R. [illegible]

(l) *Hiramaji* v. *Keshar* (1894) 18 Bom. 13. See also *Chunilal* v. *Surajchand* (1893) 5 W. [illegible]

to the officer in whose office the instrument has been so registered, and such officer should note on the copy of the instrument contained in his books the fact of its cancellation S. 17 (2) (vi)

By sec. 45 of the Act of 1864 and sec 42 of the Act of 1866 it was provided that when any Civil Court should by a decree or order create, declare, transfer, limit or extinguish any right, title, or interest in or to any immoveable property situate in any part of British India in which the Act operated, such Court should cause a memorandum of the said decree or order to be sent to the Registrar within whose district the property is situate These sections also were not re-enacted in the Registration Acts of 1871

By sec 16 of the Act of 1864 any decree or order of Court or private award of arbitration, was optionally registrable When we turn to sec 18 of the Act of 1866 we find in the list given in that section of documents of which registration is optional only " awards relating to immoveable property The list does not include " decrees and orders of Courts In sec 18, however, *of the Act of 1871, we again find not only " awards relating to immoveable property,"* but "*certified copies* of decrees and orders of Courts, amongst documents which are optionally registrable

When we come to the Registration Act 3 of 1877, we find that "decrees and orders of Courts and awards" are excepted from registration by sec. 17 (i) Further, they are not expressly mentioned in sec 18 which relates to documents of which registration is optional There is, however, no doubt that these documents may be optionally registered under sec 18 They must be taken to be included in the expression " all other documents not required by sec 17 to be registered," in cl (f) of sec 18 A person *claiming* under a decree or order has to present only a " copy " of the decree or order for registration as appears from the provisions of sec 32 of that Act The provisions of secs 17, 18 and 32 of Act 3 of 1877 relating to decrees, orders and awards were re-enacted in the present Registration Act without any change Important alterations, however, were made in sec 17 (2) (vi) of the present Act by sec 10 of the Transfer of Property (Amendment) Supplementary Act, 1929, which are noted in the next note, " Amendment of cl (vi) "

In a Bombay case (*m*) the question arose whether a decree affecting immoveable property of the value of upwards of Rs. 100 was compulsorily registrable under sec 17 of the *Registration Act 8 of 1871* It was *held* that it was not In the course of his judgment Sargent, C J., said . " The application [for execution] was refused on the ground that the decree was an instrument which created an interest in immoveable property, and could not be given in evidence for want of registration Provision was made for the registration of such a decree by the Court, which passed it, by sec 42 of Act XX of 1866, but that section was not re-enacted in Act VIII of 1871.

(*m*) *Purmanandas* v. *Vallabdas* (1887) 11 Bom 506, 512-513.

S 17 (2) (vi) If therefore it required registration under the Act, it could only be as an 'executed instrument' under section 17, a description which is scarcely applicable to a decree Moreover, it is to be remarked that section 32 deals only with the presentation of a 'copy' of a decree, the optional registration of which is expressly provided for by section 18 of the Act Upon the true construction of the Act of 1871 read in connection with Act XX of 1866 such a decree, we are strongly inclined to think, did not fall within section 17 But in any view of that Act, Act III of 1877, which is now in force expressly excludes such decrees, whether passed before or after the Act from the operation of compulsory registration, and the decree is, therefore now admissible in evidence

Amendment of cl (vi) —The clause as amended provides that nothing in clauses (b) and (c) of sub sec (1) applies to any decree or order except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject matter of the suit or proceeding The amendment was made by sec 10 of the Transfer of Property (Amendment) Supplementary Act, 1929 The clause as it stood before the amendment provided that nothing in clauses (b) and (c) of sub-sec (1) applied to *any decree or order of a Court and any award* The effect of the amendment is that—

(i) An award is no longer excepted from registration (*n*)

(ii) Consent decrees and orders comprising immoveable property other than that which is the subject matter of the suit are no longer excepted from registration They would have to be registered as instruments within sec 17 (1) (b), though neither a decree nor an order of a Court can properly be called an instrument It would have been better if a clause had been added in sub-sec (1) expressly mentioning consent-decrees and awards

As to consent decrees it was held by the Privy Council in *Hemanta Kumari Debi v Midnapur Zamindari Co* (o) that they did not require registration even if they comprised immoveable property other than that which was the subject matter of the suit The object of the amendment is to supersede the Privy Council decision to that extent

As to awards see note below, Award

Hemanta Kumari s case superseded —The facts of *Hemanta Kumari s* case referred to in the last paragraph are as follows A suit for the possession of land X was settled by a compromise The terms of the compromise were that the defendant should retain possession of land X on payment of rent and that if the plaintiff succeeded in another suit she had filed against Government for land Y she should give a lease of land Y to the

(n) *Lakhmal v Narandas* (1933) 143 I C 863 (33) A S 171 I B (o) (1919) 46 I A 240 47 Cal 485, 53 I C 534

defendant. The compromise was recorded and all its terms were embodied in the decree which was passed. The plaintiff succeeded in the suit for land Y, but refused to give a lease of it to the defendant. The question was whether the consent decree which was not registered was admissible in evidence in a suit for specific performance of the agreement embodied in it. The Privy Council held **S. 17 (2) (vi)**

(a) that as the agreement did not effect a present demise of the land it was not an agreement to lease within the meaning of sec 2 (7) of the Act and did not require registration under sec 17 (1) (d),

(b) that the agreement purported to create a contingent interest in the land and required registration under sec 17 (1) (b), but being incorporated in a decree it was exempted from registration by sec 17 (2) (vi)

(c) that sec 17 (2) (vi) extends to the whole of a consent decree and not merely to the operative part of it which comprises the land in suit

There was a dictum of the Privy Council in Pranal's case (*p*) that suggested that a compromise embracing lands not in suit, if incorporated in a consent decree, would not require registration. There had been some uncertainty as to the effect of this dictum (*q*), but *Hemanta Kumari*'s case made it clear that registration was not necessary even when the consent decree comprises lands outside the scope of the suit. The amendment made in clause (vi) supersedes *Hemanta Kumari*'s case as from the 1st April 1930. The proposition in (c) above is no longer law and from and after that date if a consent decree comprises land which was not the subject of the suit, public notice of its contents must be given by registration.

Any decree.—The words of the clause are "any decree or order of a Court" and not "any final decree or order of a Court". The exemption is not restricted to decrees which have become final and conclusive, but includes within its purview decrees which have been set aside wholly or in part in appeal or review or have become otherwise inoperative (*r*)

Decree operating to create a gift.—Reading the opening words of sub sec (2), namely, "Nothing in clauses (b) and (c) of sub sec (1) applies to" with this clause, it is clear that all decrees and orders are not excluded from compulsory registration but only those which partake of the character

(*p*) *Pranal Anni* v *Lakshmi Anni* (1899) 26 I A 101, 22 Mad 508

(*q*) See the observations of Tekchand, J in *Kasturi Lal* v *Goverdhan Dass* (1934) 15 Lah 282 149 I C 300, (34) A L 138. Also *Chelamanna* v *Rama Rao* (1913) 36 Mad 46, 121 I C 317, and *Raja Venkalappa* v *Raja Thimma* (1914) 27 Mad L J 656, 27 I C 379, overruled by *Poonanayi* v *Kundron* (1920) 43 Mad 688, 58 I C 554 F B

(*r*) *Walaiti Ram* v *Shadi Ram* (1934) A L 721, *Rajah of Kalahasti* v. *Venkalappa* (1928) 109 I C. 872, (28) A M 713 F B

S. 17 (2) (vi) If, therefore, it required registration under the Act, it could only be as an 'executed instrument' under section 17, a description which is scarcely applicable to a decree Moreover, it is to be remarked that section 32 deals only with the presentation of a 'copy' of a decree, the optional registration of which is expressly provided for by section 18 of the Act Upon the true construction of the Act of 1871 read in connection with Act XX of 1866, such a decree, we are strongly inclined to think, did not fall within section 17 But in any view of that Act, Act III of 1877, which is now in force, expressly excludes such decrees, whether passed before or after the Act, from the operation of compulsory registration, and the decree is, therefore, now admissible in evidence "

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(*n*) *Pahlumal v Naraindas* (1933) 143 I C 863, (33) A S 151 F B

(*o*) (1919) 46 I A 240, 47 Cal 485, 53 I C 534

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S. 17 (2) (vi)

of the documents mentioned in clauses (b) and (c) of sub sec (1) Thus a decree or order by which partition is effected of immoveable property of the value of Rs 100 and upwards is not compulsorily registrable, the transaction being one to which clause (b) of the section applies, and this is so whether the decree was passed before or after this Act (s) But a decree or order which purports to effect a gift of immoveable property is compulsorily registrable as gifts fall under clause (a) of sub sec (1)

Decree operating to create a lease.—A lease is not within the exception contained in sec 17 (2) (vi) The opening words of sub sec (2) are confined only to documents falling within clauses (b) and (c) of sub sec (1) and they do not apply to leases which fall within clause (d) of that sub section The result is that a consent decree purporting to create a lease requires registration under sec 17 (1) (d), and is not excepted from registration by clause (vi) The saving clause has no application to the case of a lease Thus where by the terms of a *solenama* (compromise), on which a decree was founded, the plaintiff, ordinary raiyat, stipulated with the defendant who was his dar raiyat that the latter would continue to hold the land in suit as his under raiyat at an enhanced rent from generation to generation, it was held that the *solenama* created a new lease, and that it was not operative as a lease unless it was registered under sec 17 (1) (d) The fact that the lease was embodied in a decree did not make it any the more operative as a lease, because sec 17 (2) (vi) excepts documents falling within clauses (b) and (c) and not those falling within clause (d) of sub sec (1) of this section (t) It has been held that where a howla right of a tenant was the subject matter of a litigation and a decree was passed in terms of solenamahs which recognised the howla right as a pre existing right, the decree did not require registration (t1)

Judicial proceedings—The Privy Council has repeatedly laid it down as a broad general principle that documents which form part of judicial proceedings do not require registration

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(s) *Purmanandas* v *Jalabhdas* (1887) 11 Bom. 506, 513

(t) *Nazar Ali* v *Indra Kumar* (1929) 56 Cal. 427, 118 I.C 895 ('29) A C 462, *Hemanta Kumari Debi* v *Midnapur Zamindari Co* (1920) 47 Cal 485, 46 I A 240, 53 I C 534, *Rajani Kanta* v *Raj Kumari* (1927) 31 C W N 1099, 104 I C 812, ('27) A C 913, *Janakinath* v *Mahendra Narayan* (1930) 57 Cal 775 126 I C 550, ('30) A C 94, *Attar Chand* v *Chandu Lal* (1929) 10 Lah. 685, 117 I C 240, ('29) A L. 291, *Sarat Chandra Das* v *Sarojini* (1922) 27 Cal W N 897, 79 I C 257, ('24) A C 135 *Charu Chandra* v *Sambhu Nath* (1918) 3 Pat L J 253 46 I.C 308, *Rampadarath Singh* v *Sohrai Koeri* (1919) 4 Pat L J 667, 52 I C 20, *Sachindra Mohan* v *Ramjash* (1932) 11 Pat 98, 136 I C 54 ('32) A P 97

(t1) *Jogesh Chandra* v *Beharilal Mitra* (1934) 59 Cal L J 328, ('34) A C 799

In *Bindesri Naik v. Ganga Saran* (u) the suit was for possession on the ground that previous proceedings had completed a foreclosure. The mortgagors pleaded that the decree had been satisfied by the payments they had made. The question was whether these payments had satisfied the decree and this depended upon whether the mortgagors were liable to pay *post diem* interest. In the course of the foreclosure proceedings the mortgagors had presented incidental petitions praying for further time. These petitions were with the consent of the mortgagees applying for foreclosure granted and filed with the foreclosure record. In each of these petitions the mortgagors had included *post diem* interest in calculating the amount due under the mortgage. The mortgagees relied on these admissions and the mortgagors contended that the petitions were not admissible in evidence for want of registration. The Privy Council held that the mortgagees were entitled to *post diem* interest by the terms of the mortgage and that it was not necessary to rely upon the admissions made in the course of the foreclosure proceedings. But their Lordships added that having heard counsel fully upon the point of registration they thought it right to add that "they are satisfied that the provisions of section 17 of the (Registration) Act do not apply to proper judicial proceedings whether consisting of pleadings filed by the parties or of orders made by the Court."

S. 17 (2) (vi)

In *Pranal Annee v. Lakshmi Annee* (v) a suit had been filed by reversionary heirs for lands which were in the possession of the daughter's daughter of the deceased. Some lands in which the plaintiffs had sold their interest in order to finance the litigation were not included in the suit. The suit was settled by a razinama to which was annexed a schedule descriptive of the lands. The lands in suit were in schedules A to C and the lands excluded from the suit were in schedule D. By the razinama each party took a half share in the schedule A to C lands. On the same date as the razinama the parties executed another document called an agreement of union by which the schedule D lands were also divided in equal shares. The parties each took possession of a half share of all the lands. Subsequently the reversionary heirs sued the daughter's daughter for a half share of the schedule D lands. The daughter's daughter claimed under the razinama and agreement of union, neither of which were registered. As to the razinama their Lordships said "The razinamah in so far as it was submitted to and was acted upon judicially by the learned judge was in itself a step of judicial procedure not requiring registration, and any order pronounced in terms of it

(u) (1898) 25 I A 9, 15, 20 All 171; *Raghubans Singh v. Mahabir Singh* (1905) 28 All 78; *Robert Skinner v. Mrs James Skinner* (1915) P R 91, 31 I C 537; *Charu Chandra Mitra v. Sambhu Nath Pandey* (1918) 3 Pat L J 255, 46 I C 358; *Kasturi Lal v. Goverdhan Dass* (1934) 15 Lah 282, 149 I C 300, ('34) A L 138; *Harichand v. Maghimal* (1917) P R 78, 40 I C 675.

(v) (1899) 26 I A 101, 22 Mad 508.

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(v) (1899) 26 I A 101, 22 Mad 508.

S. 17 (2) (vi) constituted res judicata, binding upon both the parties to this appeal, who gave their consent to it" The razinama only referred to the schedule D lands by way of remark and did not declare title to it and the Judges order made no reference to these lands The title to the schedule D lands was declared in the agreement of union which was not submitted to the Judge The Privy Council therefore held that as it had not been registered its stipulations were ineffectual to create any right title or interest in the schedule D lands But their Lordships further observed "If the parties after agreeing to settle the suit of 1885 on the footing that they were each to take a half share of the lands involved in that suit, and also a half share of the lands now in dispute had informed the learned judge that these were the terms of the compromise, and had invited him, by reason of such compromise, to dispose of the conclusions of the suit of 1885, their Lordships see no reason to doubt that the order of the learned judge, if it had referred to or narrated these terms of compromise, would have been judicial evidence, available to the appellant, that the respondents had agreed to transfer to her the moiety of land now in dispute'

Lastly in *Hemanta Kumari Debi* v *Midnapur Zamindari Co* (u) where a decree was passed in terms of a compromise, the Privy Council held that as the decree incorporated the terms of the agreement of compromise, registration of the agreement was unnecessary

Even before *Bindeshri*'s case the Madras High Court had held that a compromise which recited an oral agreement of charge on immoveable property was in the nature of a preliminary contract intended to be perfected by another document as its intention was not to itself create a charge, but to obtain a decree (x) Again in a Punjab case (y) execution proceedings on an instalment decree on a bond were compromised, the arrangement being that the decree holder should give time and that the judgment debtor should secure payment by a hypothecation of his jagheer income The Court held that the compromise did not require registration as the arrangement only became complete on the Court's approval

Judicial proceedings and the amendment of clause (vi) —How far the amendment of clause (vi) impinges upon the principle that judicial proceedings are exempt from registration is a question that has not yet been fully discussed in the decided cases As to decrees other than consent decrees the law remains as it was But as to consent decrees the principle yields to the express enactment requiring registration of consent decrees if they comprise immoveable property other than that which is the subject matter of the suit The application of the principle generally arises in the case of compromises and will be considered in the succeeding paragraphs

(u) (1919) 46 I A 240, 47 Cal 485, 53 I C 534

(x) Appasami v Manikam (1885) 9 Mad 103

(y) Sardar Amar Singh v Basua Mal (1885) P R 51

Petition of compromise may only be a recital A petition of compromise may only be a statement for the information of the Court that certain terms have been agreed upon accompanied with a request to dismiss the suit or to pass a decree in terms of the settlement In such cases it is merely a recital of a fact and no question of registration arises The petition in *Kamala Pillai* v *Jeevarathammal* (z) was a petition of this nature A dispute in mutation proceedings was settled by an oral gift on the 8th October A petition was presented on the 10th October informing the Collector of the gift having been made There was no question of the petition requiring registration but the Privy Council held that under sec 91 of the Indian Evidence Act the petition could not be used even as evidence of the gift having been made Another instance is the Punjab case of *Prabh Dayal* v *Gurdial* (a) An execution proceeding was dismissed on a petition presented to the Court stating that the matter had been settled by a mortgage The Court held that the petition did not require registration as it was merely a recital of a contract independently entered into In this case as oral mortgages are valid in the Punjab the Court held that sec 91 of the Indian Evidence Act was no bar to the petition being admitted as evidence of the mortgage Other instances of petitions which are mere recitals occur in the undernoted cases (b) S. 17 (2) (vi)

Petition of compromise may be a document described in s 17 (1) — A petition of compromise may however be the only writing embodying the terms of the agreement It may be the agreement of compromise reduced to the form of a document as a formal record of the arrangement In that case if it affects land it may be hit by sec 17 (1) An instance of such a petition is that in *Hemanta Kumari* v *Midnapur Zamindari Co* (c) where the terms of the agreement which declared a right to retain possession of the lands in suit and a contingent right to a lease of other lands were embodied in the petition of compromise

As to petitions of compromise of this class the question arises how far is it exempt from registration as being part of a judicial proceeding It will be convenient to consider the law as it was before the amendment of cl (vi) and as it is since the amendment

Petition of Compromise—How far exempt before the amendment—Before *Hemanta Kumari's* case it was supposed that if the

(z) (1919) 46 I A 285 43 Mad 244 53 I C 901

(a) (1902) P R 98

(b) *Panu Gopal* v *Tulsi Ram* (1929) 51 All 79 (28) A A 641 *Balleo Singh* v *Udal Singh* (1921) 43 All 1, 58 I C 732 *Pitambar* v *Udh b* (1907) 12 Cal W N 59 *Hair Ali* v *Asa Ram* (1894) P R 95 *Khair ul nissa* v *Bahadur Ali* (1906) P R 27 *Murli Dhar* v *Gobind Ram* (1914) P R 20

(c) (1919) 46 I A 240 47 Cal 485 53 I C 534

S. 17 (2) (vi) compromise incorporated in a decree related to lands outside the scope of the suit as well as to lands within the suit it required registration and could not affect the title to lands outside the suit *(d)* But after *Hemanta Kumari s* case these decisions were overruled by a Full Bench decision of the Madras High Court *(e)* The propositions deducible from the decided cases were —

(a) if the compromise is incorporated in the decree the petition does not require registration even though it comprises land outside the scope of the suit *(f)*

(b) if the compromise includes land outside the scope of the suit and that part is not embodied in the decree, the petition as to land outside the suit requires registration *(g)*

(c) if the compromise relates only to the lands in suit and part of it is not embodied in the decree, that part must be registered *(h)*,

(d) if the compromise is not embodied in the decree it must be registered *(i)*

All these propositions may be summarized in the general statement that the compromise is exempt from registration only so far as it is acted upon or is covered by the decree The compromise may embody a transaction of gift or lease and in that case the decree based upon it would require registration See note 'Decree operating to create a gift" at p 87 and note Decree operating to create a lease" at p 88 The registered decree would be sufficient evidence of the gift or lease and there would be no necessity to fall

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(d) *Chelamanna v Rama Rao* (1913) 36 Mad 46 12 I C 317, *Rajah Venkalappa v Rajah Thimma* (1914) 27 Mad L. J 656 27 I C 373

(e) *Pooranaji v Kundron* (1920) 43 Mad 688 58 I C 534 F B

(f) *Hemanta Kumari v Midnapur Zamindari Co* (1919) 46 I A 240 47 Cal 485 53 I C 534 *Sishi Bhusan v Hari Narain* (1921) 48 Cal 1059 66 I C 705, (21) A C 202 *Raghubans v Mahabir* (1905) 28 All 78 *Gobind v Dwarka Nath* (1908) 35 Cal 837 *Natesa v Vengu* (1910) 33 Mad 102 3 I C 701 *Sankarrelu v Muthuswamy* (1915) 29 Mad L. J 779, 31 I C 260 *Bisseswar v Mahadeo* (1916) 1 Pat L. J 208, 36 I C 290, *Kuru v Tejo* (1918) 3 Pat L. J 43 43 I C 288, *Charu Chandra v Sambhu Nath* (1918) 3 Pat L. J 255 46 I C 358, *Sabitri v Savi* (1933) 12 Pat 359 145 I C 1, (33) A P 306 *Manekchand v Ganeshlal* (1933) 35 Bom L. R 588 145 I C 582 (33) A B 298

(g) *Pranal Anni v Lakshmi Anni* (1899) 26 I A 101, 22 Mad. 508, *Hari v Nirod* (1921) 33 Cal L. J 437 438 61 I C 687 (21) A. C 383

(h) *Pathu v Esup* (1906) 29 Mad 365, *Kishi v Sumen* (1910) 32 All 206 5 I C 234

(i) *Muthayya v Venkataratanam* (1902) 25 Mad 553, *Deoki v Kala* (1887) P R 76, *Ghulam v Ghulam* (1923) 4 Lah 263, 75 I C 461, (23) A L. 581, *Sheo Prasad v Nawal Kishore* (1929) 27 All L. J 487, 116 I C 871

back on the compromise In the suit in which the petition was presented there would be no necessity to register the petition of compromise for it would be part of a judicial proceeding The question of registration of the petition could only arise if the decree were not registered and it became necessary to use the petition of compromise as evidence of the gift or lease in an independent proceeding In such a case, it is submitted that if the petition of compromise were not registered sec 49 would be a bar to its use as an instrument of lease or as evidence of a gift or lease S. 17 (2) (vi)

Petition of Compromise—How far exempt after the amendment.—Since the amendment of clause (vi) a consent decree comprising lands outside the scope of the suit must be registered Such consent decrees therefore stand on the same footing as decrees operating to create a lease or a gift But it is submitted that even though the decree must be registered the compromise leading up to the decree is still part of a judicial proceeding and does not require registration *in the suit in which it is filed* In *Sabitri* v *Sati* (j) the learned Judges said "It is inconceivable that the legislature exempted a compromise decree from registration provided the compromise is within the scope of the suit, but intended that the compromise petition itself should require registration" It is equally inconceivable that the legislature directed the decree to be registered when it went beyond the scope of the suit, and intended that the compromise petition should also be registered The registered decree is sufficient evidence of the transaction and there is no occasion to fall back upon the compromise petition This might occur if the decree were not registered and it were sought to use the petition in some independent proceeding In such a case it is submitted that sec 49 would be a bar to the petition being used as the transaction or as evidence of the transaction In *Sabitri* v *Sati* (k) the learned Judges pointed out that there is a distinction between a petition being used in the Court in which it is presented and its being subsequently used in another Court for the purpose of proving the right

Embodied in the decree.—It is not necessary that the decree should repeat the terms of the compromise The decree may merely say "Suit decreed in terms of the compromise" (l), or "Parties have compromised, in accordance with the terms of the compromise the suit is dismissed" In such cases the terms of the compromise must be deemed to be incorporated in the decree (m) Where the Court does not refer to the compromise in its decree, the compromise, although mentioned to the Court, cannot be deemed to be embodied in the decree (m1)

(j) *Sabitri* v *Sati* (1933) 12 Pat 359, 601, 145 I C 1, ('33) A P 306

(k) 12 Pat 359, 603, *supra*

(l) *Jagadish* v *Rasik* (1925) 30 Cal W N 307, 96 I C 753, ('26) A C 666

(m) *Jai Lal* v *Alliance Bank of Simla* (1930) 12 Lah. L J 113, 128 I C 300 ('30) A L 855, *Madhub* v *Munshi* (1932) 135 I C 203, ('32) A L 24

(m1) *Official Assignee of Madras* v *Subba Rao* ('34) A M 697

S. 17 (2) (vi)

Petition of compromise in execution proceedings—The same principles apply to petitions of compromise in execution proceedings Some of the cases cited were compromises filed in execution proceedings (*n*) The Allahabad case of *Surju Prasad* v *Bauani* (*o*) is a good illustration of the present law In execution of a money decree the land of the judgment debtor *A* was attached *A* sold the land to *B* who objected to the attach ment A compromise was come to by which *B* was allowed to remain in possession of the land and *B* promised to pay the decretal debt and hypothe cated the land to secure payment The compromise petition was filed and the execution application and the objection were both dismissed In a subsequent proceeding to enforce the hypothecation it was held that the petition was not admissible for want of registration It will be observed that the petition was admitted in the execution proceedings though not registered but as it referred to land outside the scope of the decree under execution it could not be referred to in a subsequent proceeding as an instrument of hypothecation

Petition of compromise in mutation proceedings.—A petition of compromise filed in a mutation proceeding in a revenue Court may only be a statement giving information to the Court of an already completed trans action or it may be a formal record of the arrangement entered into by the parties In the former case no question of registration arises (*p*) In the latter case if it is a document described in sec 17 (1) it requires registration even though it be a record of a family arrangement (*q*), for a family arrange ment though not a transfer of title is a declaration of title In two cases however the Allahabad High Court held that such a petition of compromise was exempt because it was a family arrangement (*r*) In the cases cited above the question whether such a petition when acted upon by the Court was exempt as part of a judicial proceeding was not considered On this point there is a conflict of decisions The Allahabad High Court held in one case (*s*) that the petition was a step of judicial procedure and in another that

(*n*) *Sardar Amar Singh* v *Baswa Mal* (1885) P R 51, *Prabh Dayal* v *Gurmukh* (1902) P R 98, *Poor tanaji* v *Kundron* (1920) 43 Mad 688 58 I C 534 F B

(*o*) (1879) 2 All 481

(*p*) *Satrohan Lal* v *Nageshar Prasad* (1916) 35 I C 770 *Ram Gopal* v *Tulshi Ram* (1929) 51 All 79 (28) A A 641, *Gharib Rai* v *Mukh Lal* (1928) 50 All 31 102 I C 602 (27) A A 610, *Bakhta war* v *Sunder Lal* (1926) 48 All 213 90 I C 992 (26) A A 173 *Baldeo Singh* v *Udal Singh* (1921) 43 All 1 58 I C 73? (21) A A 248 *Bhagat* v *Madho Prasad* (34) A O 402

(*q*) *Ram Gopal* v *Tulshi Ram* (1929) 51 All 79 (28) A A 641, *Mst Bhagwan Dei* v *Shib Singh* (1930) 126 I C 345, (30) A A 341, *Pustam Ali* v *Mst Gowra* (1911) 33 All 109

(*r*) *Kokla* v *Piari Lal* (1913) 35 All 502 21 I C 29, *Daya Shankar* v *Hub Lal* (1915) 37 All 105 27 I C 497

(*s*) *Baldeo Singh* v *Udal Singh* (1921) 43 All 1, 58 I C 732

it was not (t) The Chief Court of Oudh holds that the petition is exempt as a judicial proceeding (u) relying on a dictum of the Privy Council that proceedings in mutation cases if not judicial are at any rate quasi judicial (v) **S. 17 (2) (vi)**

Petition of compromise in testamentary proceedings—The principles governing petitions of compromise filed in civil suits apply also to those filed in testamentary proceedings *A* applies for probate of a will *B* files a caveat Subsequently *A* and *B* present a petition to the Court stating that they have compromised the suit and that *A* and *B* should be equally entitled to certain immoveable property of the value of Rs 500 No order is made on the petition the Court saying that it cannot act on it, and probate is directed to be issued to *A* The petition is not registered *B* then sues *A* claiming a moiety of the property The petition not being registered, is inadmissible in evidence to prove *B*'s claim, having regard to sec 49 of the Act (w)

Petition of compromise in criminal proceedings—The principle of exemption of documents which are part of judicial proceedings cannot be applied to criminal proceedings for a criminal Court has no jurisdiction to make orders declaring title to land In a Calcutta case (x) *A* in criminal proceedings which he had instituted against *B* filed a petition withdrawing the proceeding as the dispute had been compromised The terms of the compromise were stated in the petition and were that *A* should allow *B* to remain in possession of the land in dispute for a period of nine years at a specified rent and that the razinama should be treated as a lease The complaint was withdrawn and subsequently *A* sued *B* for the rent Maclean, C J, held that the petition being unregistered was not admissible in evidence as a lease The learned Chief Justice added that "if this petition had been filed in a civil proceeding and the petition had been followed by an order or decree, which embodied directly or indirectly, its terms then it would not have been necessary to have had it registered" This judgment shows that the principle of *Bindeshri*'s case has no application to criminal proceedings, but the judge omitted to notice that a decree embodying a lease is not exempt from registration See note 'Decree operating to create a lease' at p 88 In a case from Oudh (y) a compromise filed in a criminal proceeding was admitted in evidence though unregistered as the value of the property was less than Rs 100 The applicability of *Bindeshri*'s case was not considered

(t) *Jagrani* v *Bisheshar* (1916) 38 All 366 35 I C 701

(u) *Triloki Nath* v *Rani Manorath* (1932) 7 Luck 32, 132 I C 537, ('31) A O 296, *Sitla Baksh* v *Jang Bahadur* (1933) 8 Luck 694, 145 I C 805 ('33) A O 347

(v) *Sadik Husain Khan* v *Hashim Ali* (1916) 43 I A 212 38 All 627, 36 I C 104

(w) *Kali Charan* v *Ram Chandra* (1903) 30 Cal 783

(x) *Biraj* v *Kedar Nath* (1908) 35 Cal 1010

(y) *Jawahir* v *Mata Din* (1934) 148 I C 867, ('34) A O 116

S. 17 (2) (vi)

Security bond under C. P. C, O. 41, r. 5.—A security bond under O 41, r 5 *of the Code of Civil Procedure hypothecating immoveable property* of the surety does not require registration (z) This is on the principle that proceedings of Courts do not require registration See note "Judicial proceedings" at p 88 It makes no difference that the terms of the bond are not embodied in the order of the Court, for the rights under the bond only come into existence when the Court accepts the bond (*a*) This principle was overlooked in a contrary decision of the Madras High Court (*b*)

Assignment of security bond under C P. C., O. 32, r. 16—An assignment by the Court of a security bond under O 32, r 16 of the Code of Civil Procedure for the purpose of realization by suit is merely an order of the Court and does not require registration (*c*)

Assignment of mortgage decree—See notes under the same head to sec 17 (1) (b) on p 47 above

Award—Sec 17 (2) (vi) as amended provides that nothing in clauses (b) and (c) of sub sec (1) applies to any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject matter of the suit The amendment was made by sec 10 of the Transfer of Property (Amendment) Supplementary Act 1929 The clause as it stood before the amendment *provided that nothing in clauses (b) and (c) of sub sec (1) applies* to any decree or order of a Court and *any award*

The effect of the amendment is that an award which embodies a transaction under s 17 (1) (b) or (c) is no longer exempt from registration Such an award must be registered and is invalid if not registered If application is made to the Court to file it, the Court must reject it for want of registration (*d*) In a Peshawar case such an award was held not to require registration because it was subsequently embodied in a decree (*e*) It is submitted that this is wrong for the award was not made in a judicial proceeding An award requires registration if it is made under the Arbitration Act or if it is made without the intervention of the Court under Schedule II, para 20 of the Civil Procedure Code But an award made on a reference by the Court under para 1 of Schedule II in a suit or under para 17 on an

(z) *Kasturi Lal v Goverdhan Das* (1934) 15 Lah 282 149 I C 300 (34) A L 138 F B overruling *Lahore Spinning & Weaving Mills Co v Uttam Chand* (1919) P R 122 53 I C 463 *Jayappa v Shivangowda* (1928) 52 Bom 72 107 I C 710, (28) A B 42

(a) 15 Lah 282 *supra*

(b) *Nagaruru v Tungatur* (1908) 31 Mad 330

(c) *Ram Saran v Yudhistir Prasad* (1931) 53 All 786 133 I C 904 (31) A A 389

(d) *Bachchan Lal v Narottam Datt* (1932) 30 All L J 1090, 143 I C 423 (33) A A. 59, *Jitendra Nath v Nagendra Nath* (34) A.C 815

(e) *Hukam Chand v Lal inda Ram* (1933) 146 I C 1084 (33) A Pesh 83

agreement to refer is part of a judicial proceeding and would, it is submitted, be exempt under the rule in *Bindeshri's* case (e1) S. 17 (2) (xi)

In cases decided before the amendment of clause (xi) it was held that an award is none the less an award because the parties have signed it in token of assent (f) or because the parties had agreed to its terms before the award was made (g)

SEC. 17 (2) (xi)—RECEIPTS FOR MORTGAGE CLAIM.

Earlier enactments This clause corresponds with cl (n) of sec 17 of Act 3 of 1877 Cl (n) was inserted in that section by Act 7 of 1886

Receipt for payment of money due under a mortgage.—This clause did not occur in sec 17 of the Registration Act 3 of 1877 as originally passed It was inserted for the first time in that section as cl (n) by the Amending Act 7 of 1886 Before the amendment the only clause which could apply to receipts for payment of money due under mortgages was cl (c) of sub-sec (1) of the present section There were several decisions under that clause relating to such receipts The object of the amendment was to supersede the decisions of the Allahabad High Court in *Dalip Singh* v *Durga Prasad* (h) and *Imdad Husain* v *Tasadduk Husain* (i) It was held in those cases that a mere receipt for payment of money due under a mortgage required registration under cl (c) though it did not in itself purport to limit or extinguish the mortgagee's interest in the mortgaged property The reason given was that payment of money due under a mortgage, whether it was payment of the whole or part of the mortgage debt, extinguished *ipso facto* the mortgagee's interest in the property to the extent of such payment It was also held in those cases that such payment was "payment of consideration on account of the limitation or extinction" of the mortgagee's right within the meaning of cl (c) But even before the Amending Act the decision in *Dalip Singh* v *Durga Prasad* (j) was dissented from by the High Court of Madras in *Venkayyar* v *Venkatasubbayyar* (k), and by the High Court of Bombay in *Shidlingapa* v *Chenbasapa* (l), and it was eventually overruled by a Full Bench of the Allahabad High Court in *Jiwan Ali Beg* v *Basa Mal* (m) decided in 1886 In *Jiwan Ali's* case it was held that neither an endorsement on a mortgage deed acknowledging

(e1) See *Jitendra Nath De* v *Nagendra Nath* ('34) A C 815

(f) *Wazir Ali* v *Mahbub Ali* (1917) P R 10 22 I C 412, *Yemnava* v *Yejanshidappa* (1927) 29 Bom L R 297, 101 I C 351 ('27) A B 656, also *Msst Jasoda* v *Punit Singh* (1934) 146 I C 937, ('34) A P 48 but the report does not disclose the date of the award

(g) *Wazir Ali* v *Mahbub Ali* (1917) P R 10, 22 I C 412, *Tara Kanta* v *Rai Kishori* (1910) 13 Cal. L J 158, 6 I C 361

(h) (1877) 1 All. 442

(i) (1884) 6 All. 335

(j) (1877) 1 All 442

(k) (1881) 3 Mad. 53

(l) (1880) 4 Bom 235.

(m) (1886) 9 All. 108 [F B]

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S. 17 (2) (xi)

the payment of the whole or any part of the mortgage debt nor any other receipt for payment of money due under a mortgage limited or extinguished the mortgagee's interest in the mortgaged property, unless the endorsement or receipt purported *on the face of it* to limit or extinguish such interest. In other words, that a bare receipt for payment of money due under a mortgage did not carry with it any limitation or extinction of the mortgagee's interest in the property. Such a receipt, as held in the Bombay case above referred to, only modified the account between the mortgagor and mortgagee, and it did not therefore require registration and was admissible in evidence to show the state of the mortgage account (n). In the same case it was also held that mere payment of a mortgage-debt, whether it was payment of the whole or a part thereof, could not be said to be "payment of consideration on account of the limitation or extinction" of the mortgagee's interest in the property. The reason given was that the term "consideration" in cl. (c) implied that the person himself to whom the money was paid [that is, the mortgagee] limited or extinguished his interest in the property in consideration of such payment, whereas such limitation or extinction (if there could be said to be any) as resulted from the payment on account of the mortgage-debt was *the legal consequence* of such payment, and not the act of the mortgagee (o).

The present clause is in conformity with the decision of the Full Bench in *Jiwan Ali Beg* v. *Basa Mal* (p). It does not contain the word "consideration" which occurs in cl. (c) and on which an additional argument was based by Sargent, C.J., in the Bombay case referred to above in support of the view that a simple receipt for payment of money due under a mortgage did not require consideration. The only test under the present clause is whether the receipt purports to extinguish the mortgage. If it does, it requires registration, but not otherwise. But it is not clear whether the extinction should be of the whole of the mortgage security. Suppose two properties A and B are mortgaged to secure payment of Rs. 1,000 and the mortgagor pays Rs. 400 and obtains a receipt from the mortgagee in these terms: "I hereby acknowledge payment of Rs. 400, part of the mortgage-debt, and release property A from the mortgage." Does the receipt require registration under this clause? If the case were governed by cl. (c), the receipt would require registration as *limiting* the mortgagee's interest in the mortgaged properties, or as *extinguishing* his interest in its entirety in one of the mortgaged properties. It is submitted that the receipt must be registered under the present clause also, as it purports to extinguish the mortgage on one of the properties in its entirety. Suppose now that there

(n) Shidrapa v. Chenbasapa (1880) 4 Bom. 233, 238.

(o) (1880) 4 Bom. 233, 238, *supra*; Venkatarayar v. Venkataramaiyar (1881) 3 Mad. 53; Sheikh *Gafur* v. *Mahmud* (1873) 20 W.R. 334, 336.

(p) (1886) 9 All. 108, 114, where the earlier cases are reviewed.

is only one property mortgaged to secure payment of Rs 500, and the mortgagor pays Rs 200, and obtains a receipt from the mortgagee in these terms "I hereby acknowledge payment of Rs 200, and agree that the property shall henceforth stand charged with payment of Rs 300 only and interest" If the case were governed by cl (c), the receipt would require registration as *limiting* the mortgagee's interest in the property This seems to follow from the decisions in *Shidlingapa* v *Chenbasapa* (q) and *Jiwan Ali Beg's* case referred to above (r) Under the present clause, it is submitted, the receipt does not require registration as it does not purport to extinguish the entire mortgage This view is supported by the decision in *Sri Ram* v *Kesri Mal* (s), but it is opposed to the decision in *Gobardhan* v *Jadunath* (t) The latter decision, it is submitted, is not correct

The result is that a receipt for payment of money due under a mortgage does not require registration under this clause if it does not purport to extinguish the mortgage (u) But it does require registration, if it purports to extinguish the mortgage (v) The present clause does not refer to the extinction of the mortgage debt but to the extinction of the mortgage itself Extinction of the mortgage debt does not *ipso facto* extinguish the mortgage

(q) (1880) 4 Bom 235

(r) *Jiwan Ali* v *Basa Mal* (1886) 9 All 108 [F B]

(s) (1896) 18 All 338

(t) (1913) 35 All 202 19 I C 449

(u) *Jiwan Ali Beg* v *Basa Mal* (1886) 9 All 108, *Shidlingapa* v *Chenbasapa* (1880) 4 Bom 235, *Venkayyar* v *Venkatasubbayyar* (1881) 3 Mad 53 *Annapa* v *Ganpati* (1881) 5 Bom 181 *Gurdial* v *Jauhri* (1885) 7 All 820, *Uppalakandi* v *Kunnam* (1896) 19 Mad 288 *Krishnan* v *Raman* (1897) 20 Mad 484 *Neelamani* v *Sukadutu* (1920) 43 Mad 803, 60 I C 255 *Sri Ram* v *Kesri* (1896) 18 All 338 *Ganga Bakhsh* v *Jagannath* (1905) 27 All 305 *Lakshman* v *Damodar* (1900) 24 Bom 603 *Sheik Gugunfur Ali* v *Mahomed* (1873) 20 W R 334, *Bijraj* v *Pura* (1915) 42 Cal 56, 24 I C 296 (P C), *Shridhar* v *Janak* (1924) 26 Bom L R 486 80 I C 415 (24) A B 447, *Muhammad Hussain* v *Karam Ilahi* (1929) 10 Lah 709, 118 I C 533, (29) A L 312, *U Tha Daung* v *Ma Cho* (1930) 8 Ran 257 126 I C 218, (30) A R 277 *Gopalswami* v *Kalyana* (1925) 48 Mad L J 155, 85 I C 433 (25) A M 348 distinguishing *Lakshmana* v *Chenchu ramayya* (1917) 34 Mad L J 79, 44 I C 132 *Pranballa Saha* v *Bhagaban Chinfra* (1933) 37 Cal W N 424 145 I C 657 (33) A C 588 *Bal Mokand* v *Ram Lal* (1931) 133 I C 867 *Ramchandra* v *Kailashchandra* (1931) 58 Cal 532 133 I C 701 (31) A C 667

(v) *Imdad* v *Tasadduk* (1884) 6 All 335 as explained in (1886) 9 All 108 at p 113 *Mahadaji* v *Vyankaji* (1876) 1 Bom 197, *Basawa* v *Kalkapa* (1878) 2 Bom 489, *Ramapa* v *Umanna* (1883) 7 Bom 123, *Antaji* v *Dattaji* (1894) 19 Bom 36 41, *Parasharampant* v *Rama* (1910) 34 Bom 202, 4 I C 588, *Gobardhan* v *Jadunath* (1913) 35 All 202, 19 I C 449 [not good law], *Mahamad Kasam* v *Ranu* (1907) 9 Bom L R 254, *Nand Lal* v *Gurditta* (1902) Punj Rec No 99, *Jwala Prasad* v *Mohan Lal* (1926) 48 All 705, 97 I C 162, (26) A A 693

S. 17 (2) (xi) It follows from what is stated above that a receipt which merely shows the state of account between the mortgagor and mortgagee does not require registration (*u*). Nor does a receipt which purports merely to be a settlement of the mortgage debt between the mortgagor and mortgagee (*x*). A receipt which purports to show that what was really agreed upon between the parties was simple and not compound interest does not require registration (*y*). It has been held that a document whereby a usufructuary mortgagee admits that the mortgage debt has been satisfied out of the usufruct and restores the land to the mortgagor's possession does not require registration (*z*), but this seems to be a case on the border line. In a Rangoon case (*a*), a document was executed by the heir of the deceased mortgagee which purported to give credit to the mortgagor for a part of the principal and interest in consideration of the mortgagor paying all expenses in connection with the litigation relating to the estate of the deceased mortgagee. It was held that the document did not require registration, the Court observing that there was a clear distinction between the discharge of a debt and the extinguishment of a mortgage though one may be the result of the other. In an Allahabad case (*b*) it was held by the High Court of Allahabad that a receipt whereby the mortgagee gave up a part of the principal and interest in consideration of services rendered by the mortgagor to him required registration, the reason given being that the receipt purported to extinguish the mortgage *to the extent of* a considerable portion of the mortgage debt. This decision, it is submitted, is not correct. The receipt did not extinguish the mortgage, that is, the *whole* mortgage. The words of cl. (xi) are "extinguish the mortgage," not extinguish the mortgage in whole *or in part* (*c*). Moreover, it is inconsistent with the decision in *Kailash* v. *Sheikh Chennu* (*d*).

Illustrations

(a) A receipt endorsed on a mortgage bond by the mortgagee runs in these terms: "Paid on the 21st December 1881, Rs. 3,500" (part of the mortgage-debt). The receipt does not require registration. *Jiwan Ali Beg* v. *Basa Mal* (1886) 9 All. 108.

(*u*) *Shidlingapa* v. *Chenbasapa* (1880) 4 Bom. 235, 238.

(*x*) *Lakshman* v. *Damodar* (1900) 24 Bom. 609; *Uppalalandi* v. *Kunnam* (1896) 19 Mad. 288; *Sasi Bushan* v. *Ram Chandra Das* (1931) 35 Cal. W. N. 861, 135 I. C. 871, ('31) A. C. 136.

(*y*) *Kailash* v. *Sheikh Chennu* (1915) 42 Cal. 546, 30 I. C. 804.

(*z*) *Rajani Kanta* v. *Ali Naoz* (1929) 56 Cal. 910, 122 I. C. 193, ('30) A. C. 79.

(*a*) *U Tha Daung* v. *Ma Cho* (1930) 8 Rang. 257, 126 I. C. 218, ('30) A. R. 277.

(*b*) *Gobardhan* v. *Jadunath* (1913) 35 All. 202, 19 I. C. 419. The receipt is not set forth in the report. It is not clear whether the words "against the mortgaged property" in the last paragraph on p. 203 appeared in the receipt.

(*c*) See *Sri Ram* v. *Keori* (1896) 18 All. 338, 340.

(*d*) (1915) 42 Cal. 546, 30 I. C. 804.

(b) A receipt passed by a mortgagee to the mortgagor is in these **S. 17**
terms "I have this day received payment from you of Rs 350 **(2) (xi)**
for principal and interest on account of the mortgage debt I have excused payment of balance of interest *Nothing remains due under the mortgage*" The receipt does not require registration It does not on the face of it purport to extinguish the *mortgage* *Neelamani* v *Sukaduru* (1920) 43 Mad 803, 806 60 I C 255 *Seshayya* v *Subbamma* (1898) 8 Mad L J 209 *Hari Narain* v *Kusum* (1910) 37 Cal 589 594 595 6 I C 159 *Sippan Chetti* v *Yegnanarayana* (1932) 136 I C 317 (32) A M 141 See ill (e) below

(c) A receipt passed by a mortgagee to the mortgagor runs in these terms I have received Rs 500 in full satisfaction of the mortgage debt and I *will* return the title deeds to you The receipt requires registration as it purports to extinguish the mortgage *Jwala Prasad* v *Mohan Lal* (1926) 48 All 705 97 I C 162 (26) A A 693

(d) An endorsement made by a mortgagee on a mortgage deed *releasing the mortgaged property* in consideration of a cash payment of Rs 300 requires registration *Parasharampant* v *Rama* (1910) 34 Bom 202 4 I C 588

(e) A receipt passed by a mortgagee to the mortgagor is in these terms The mortgage bond is returned No money remains due The receipt requires registration as it purports to extinguish the *mortgage* *Jwala Prasad* v *Mohan Lal* (1926) 48 All 705 97 I C 162 (26) A A 693 dissenting from *Piari Lal* v *Madan* (1912) 34 All 528 16 I C 170 *Asanuddin Monda* v *Asmatulla* (1932) 36 Cal W N 738 142 I C 517 (33) A C 198

(f) *A* passes a receipt to *B* in these terms You shall take this as a receipt for the discharge of the hypothecation deed The High Court of Madras has held that the receipt though it *may operate* to extinguish the mortgage does not on the face of it *purport* to extinguish it and does not therefore require registration *Gopalaswami* v *Kalyana* (1925) 48 Mad L J 155 85 I C 433 (25) A M 447

Co mortgagees —*A* mortgages his property to *B* and *C* to secure payment of Rs 500 the shares of *B* and *C* in the loan being equal *A* then pays off *B* and takes an unregistered receipt from him releasing the mortgaged property to the extent of his one half share *A* then sells the property to *C* *B* sues *C* to recover his one half share of the mortgage debt *C* tenders the receipt in evidence to show that *B* s interest in the mortgage has been extinguished by the payment The question is whether the receipt being unregistered is admissible in evidence It was held by the High Court of Bombay in a case decided before the Amending Act 7 of 1886 that the receipt, being unregistered is not admissible in evidence (*e*) On the other

(*e*) *Ramapa* v *Umanna* (1883) 7 Bom 123

S. 17 (2) (xi), (xii)

hand it has been held by the High Court of Allahabad in a case decided under the present clause that the receipt not purporting to extinguish the *entire* mortgage but only a part thereof is admissible in evidence though unregistered (*f*) It will be observed that in both the cases the contest was between a mortgagee on the one hand and the co mortgagee who had purchased the equity of redemption of the mortgagor on the other Such being the case the receipt though it required registration before the amendment does not require registration under the present clause It is not clear whether if the contest had been between the two mortgagees and one of them sought to rely on the receipt to show that the interest of the other in the property had ceased the receipt would have been admitted in evidence if unregistered We are inclined to think that it could not

Part payment of mortgage-debt by a person not a party to the mortgage —A receipt passed by a mortgagee to a person not a party to the mortgage for payment made by the latter on account of the mortgage debt whereby the mortgagee releases part of the mortgaged property from liability under the mortgage does not require registration The reason is that such a receipt does not operate as a release *as between the parties to the mortgage* (*g*)

Illustration

A mortgages two properties X and Y to *B* to secure payment of Rs 1,500 lent by *B* to *A* *A* then executes a second mortgage of property X to *C* *C* pays Rs 700 to *B* and obtains a receipt from *B* in these terms "Received on account of the release of property X from *C* Subsequently *B* sues *A* and *C* on his mortgage asking for a sale of both the mortgaged properties *C* tenders the receipt in evidence to prove payment of Rs 700 to *B* and to prove also that *B* is not entitled to sell property X The receipt does not require registration and it is admissible in evidence *Gurdial* v *Jauhri* (1885) 7 All 820

Oral Evidence —See notes to sec 17 (1) (c) under the same head, *on p 62 above*

SEC. 17 (2) (XII)—CERTIFICATE OF SALE.

Certificate of sale —This clause corresponds with cl (o) of sec 17 of the Registration Act 3 of 1877 It was inserted in that section by the Amending Act 7 of 1888 and it was to be construed as if it had been inserted by Act 12 of 1879 Before that enactment there was a conflict of decisions whether a certificate of sale required registration, it being held in some cases

(*f*) *Sri Ram* v *Kesri* (1896) 18 All. 339 ; *Ganga Bakhsh* v *Jagannath* (1905) 27 All 305
(*g*) *Gurdial* v *Jauhri* (1885) 7 All. 820 ,

that it did (*h*), and in others that it did not (*i*) The amendment gave effect to the latter decisions Sec 89 (2) of the Act provides for the filing of copies of certificates of sale granted under O 21, r 94, of the Code of Civil Procedure by the registering officer in Book No 1 Sec 89 (4) provides for the filing of copies of certificates of sale granted by Revenue Officers A certificate granted by a Collector of sale of surplus lands acquired by Government under the Land Acquisition Act, is exempt from registration under this clause (*j*) **S. 17 (2)**

SEC. 17 (2) EXPLANATION—RECITAL OF PAYMENT OF EARNEST MONEY.

This Explanation is new It was added by sec 2 of the Indian Registration (Amendment) Act, 1927 The Explanation says that the document purporting or operating to effect a contract for the sale of immoveable property shall not be deemed to require *or ever to have required* registration by reason only of the fact that such a document contains a recital of the payment of any earnest money or of the whole or of any part of the purchase money The Explanation supersedes the decision of the Privy Council in *Dayal Singh* v *Indar Singh* (*k*) It was held in that case that where an agreement for the sale of immoveable property acknowledged the receipt of Rs 1,000, part of the purchase price paid by the buyer as earnest money, and the buyer sued the seller for specific performance, the agreement required registration under sec 17 (1) (b) inasmuch as the buyer was entitled to a charge upon the property in respect of the earnest money under sec 55 (6) (b) This decision was at variance with a long series of decisions (*l*) in which it was held that such an agreement fell under sec 17 (2) (v) and that it did not require registration Moreover it was not brought to the notice of the Privy Council that the Transfer of Property Act did not apply in the province in which the case arose (*m*) The Explanation is retrospective and has been applied in subsequent cases (*n*)

(*h*) *Srinivasa* v *Seshayyangar* (1881) 3 Mad 37 [F B] *Kanahia Lal* v *Kali Din* (1873) 2 All 392 393 *Padu* v *Pakhmai* (1873) 10 Bom H C 435 *Harkisandas* v *Bai Icha* (1879) 4 Bom 155

(*i*) *Fakirchand* v *Kahandas* (1866) 3 Bom H C A C 167, *Masarat un nissa* v *Adit Ram* (1883) 5 All 568 [F B], *Prokash Chunder* v *Tarachand* (1882) 9 Cal 82 [F B]

(*j*) *Sarat Chandra* v *Jatindranath* (1908) 35 Cal 614

(*k*) (1926) 53 I A 214, 98 I C 508, (26) A PC 94, followed in *Ningappa* v *Gyanaji* (1927) 51 Bom 231, 101 I C 155, (27) A B 157

(*l*) See *Sangaua* v *Huchangouda* (1924) 48 Bom 166, 83 I C 533 (24) A B 174

(*m*) See in this connection *Lakhmidas & Co* v *Sir D J Tata* (1927) 51 Bom 247, 101 I C 229, (27) A B 195

(*n*) *Nagarbashi Banik* v *Meghnathan Marshan* (1931) 58 Cal 449 129 I C 839, (31) A C 171 *Chhanga Singh* v *Gajjan Singh* (1932) 133 I C 669 (32) A L 95, *Bansidhar* v *Sampat Kumar Singh* (1927) 49 All 806, 103 I C 417, (27) A A 287, *Vadirazu* v *Somu* (1930) 53 Mad 750, 125 I C 539 (30) A M 683, *Abdul Latif Mian* v. *Debi Mahton* (1934) 15 P L T 443, (34) A P 495

S. 17 (3)

SEC. 17 (3)—AUTHORITY TO ADOPT.

Authority to adopt—Written authorities to adopt as on, not conferred by a will were made compulsorily registrable for the first time by Act 8 of 1871 if they were executed after January 1, 1872 The object of the enactment was to provide a safeguard against fraud As regards an authority to adopt conferred by a will, it was thought that wills were generally subject to the probate test and that it was not therefore necessary that such an authority should be made compulsorily registrable Hence authorities to adopt conferred by will have been expressly excepted from registration (*o*)

Whether a written authority to adopt is testamentary or non testamentary is a question of construction in each case A writing is not necessarily testamentary because the executant chooses to call it a will If the writing amounts to a *present* authority to adopt, that is, an authority which may be exercised at any time after its execution it is a non testamentary instrument and requires registration though the executant may have described it as a will (*p*) The fact that the writing also contains directions for the guardianship of the adopted son or for delivering possession of the property to him does not necessarily constitute it a will (*q*)

A Hindu who had not attained his majority so as to be competent to make a will executed a document purporting to dispose of his property, it also conferred authority to adopt, which he was of an age to do validly The document was registered as a will, but it was not presented for registration by any person who was entitled under sec 40 to present an authority to adopt It was held by the Privy Council that the document having no legal effect as a will the authority to adopt could not be treated as one conferred by a will and that it was ineffectual since it was not duly registered as an authority to adopt (*r*)

Deed of adoption—A deed of adoption, as distinguished from an authority to adopt, does not require registration (*s*) This is because it is not the deed, but the adoption itself, that creates the status of adopted son and confers an interest in the property of the adoptive father (*s*) But if the

(*o*) *Bhasha* v *Indar* (1888) 16 Cal 556, 16 I A 53, *Bachoo* v *Khushalbhai* (1902) 4 Bom L R 883 885 886

(*p*) *Jagannatha Bheema Deo* v *Kunja Behari Deo* (1921) 48 I A 482 44 Mad 773, 64 I C 458, (22) A PC 162

(*q*) (1921) 48 I A. 482 44 Mad. 773 64 I C 458 (22) A I C 162 *supra*, *Soma Sundara* v *Durai sami* (1903) 27 Mad. 30

(*r*) *Kondapalli* v *Mandapaka* (1925) 52 I A 305, 48 Mad 614, 89 I C 733 (25) A. PC 196

(*s*) *Vishwanath Ramji* v *Rahibai* (1931) 55 Bom 103 128 I C 901, (31) A. B 105, *Shivlingappa* v *Haribai* (1890) Bom P J 78 cited in *Fatimabai* v *Shaikh Hassan* (1907) 9 Bom L R 1071, 1079

deed declares or reserves an interest for a third person in immoveable property, and such interest exceeds in value Rs 100 the deed requires registration under clause (b) of this section (t) Ss. 17(3), 18

Authority to adopt executed in a Native State.—Clause (3) is a clause affecting status The Indian Legislature has no authority to legislate as to the status of subjects of Native States This clause therefore does not apply to an authority to adopt executed in Native States by domiciled subjects of those States Such authorities are admissible in evidence in British India without registration (u)

Documents of which registration is optional

18. Any of the following documents may be registered under this Act, namely —

(a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property ,

(b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest ,

(c) leases of immoveable property for any term not exceeding one year, and leases exempted under section 17 ,

(d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property ;

(e) wills ; and

(f) all other documents not required by section 17 to be registered.

(t) *Pirsab* v. *Gurappa* (1914) 38 Bom 227, 24 I C. 716

(u) *Venkatapayya* v *Venkata Ranga Row* (1920) 43 Mad 288, 302, 59 I.C 978

S. 18 **Corresponding sections of the earlier Acts.—**

Sec 16 *of the Registration Act* 16 *of* 1864 was as follows —

" On or after the date on which this Act shall come into operation, any of the following instruments executed on or after the said date may be registered under this Act —

(1) Any instrument which purports or operates to create, declare, transfer or extinguish any right, title, or interest of value less than one hundred rupees in any immoveable property

(2) Any instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, transfer or extinction of any right, title or interest, of such value as aforesaid, in any such immoveable property

(3) Any lease for a period not exceeding one year

(4) Any instrument which purports or operates to create, declare, transfer, or extinguish any right, title, or interest in any moveable property

(5) Any Will, Codicil, or Authority to adopt a son

(6) Any decree or order of Court or private award of arbitration

(7) Any deed, bond, contract, or other obligation "

Sec 18 *of the Registration Act* 20 *of* 1866 was as follows —

" Any of the documents next hereinafter mentioned may be registered under this Act, (that is to say) —

(1) Instruments which purport or operate to create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property

(2) Instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest

(3) Leases of immoveable property for any term not exceeding one year, and the pattas and muchalkas referred to in section 2

(4) Awards relating to immoveable property

(5) Instruments which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property

(6) Wills or Authorities to adopt a son

(7) Acknowledgments, Agreements, Appointments, Articles of Partnership, Assignments, Awards, Bills of Exchange, Bills of Sale, Bonds, Composition deeds, Conditions of Sale, Contracts, Covenants, Grants, Instruments

of Dissolution of Partnership, Instruments of Partition, Powers of-Attorney, Promissory Notes Releases, Settlements, Writings of Divorcement, and all other documents not hereinbefore mentioned" **S. 18**

Sec 18 *of the Registration Act* 8 *of* 1871 was as follows —

"Any of the documents next hereinafter mentioned may be registered under this Act (that is to say) —

(1) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees to or in immoveable property

(2) Instruments acknowledging the receipt or payment of any consideration on account of the creation declaration, assignment, limitation, or extinction of any such right, title or interest

(3) Leases of immoveable property for any term not exceeding one year, and leases exempted under section seventeen

(4) Awards relating to immoveable property

(5) *Instruments which purport or operate to create, declare,* assign, limit or extinguish any right, title or interest, to or in moveable property

(6) Wills

(7) Acknowledgments Agreements Appointments Articles of Partnership Assignments, Awards, Bills of Exchange, Bills of Sale, Bonds Composition-deeds, Conditions of Sale, Contracts, Certified copies of Decrees and Orders of Courts, Covenants, Grants, Instruments of Dissolution of Partnership, Instruments of Partition, Powers of Attorney Promissory Notes, Releases, Settlements, Writings of Divorcement, and all other documents not hereinbefore mentioned"

Optional registration—The opinion prevailed at one time that where documents were so described as to fall within both secs 17 and 18, they were to be considered as optionally registrable, and not compulsorily registrable (*v*) But this was not the intention of the Legislature The intention was that all documents mentioned in sec 17 should be registered under pain of losing their validity to the extent mentioned in the Acts To make this clear, sec 18 of the Registration Act 3 of 1877 was re cast The present section is a reproduction of that section

Leases.—Leases are compulsorily registrable under the Transfer of Property Act even though exempted under the proviso to sec 17 (1) Clause (c) of sec 18 can therefore only refer to agricultural leases which are not governed by the Transfer of Property Act

(*v*) See, for instance, *Nem Roy* v *Lalmun Roy* (1876) 25 W R 376 378 [instrument of partition Act 8 of 1871, sec 18 (7)]

Ss. 18-20

Wills.—Where a will recites a *past* transaction, *e g*, a transfer of his immoveable property by the testator to his wife in lieu of dower, it is admissible in evidence to prove the grant (*w*)

See notes to sec 17 (1) (a), "Unregistered deed of gift confirmed by donor's will" on p 34 above, and notes to sec 17 (1) (b), "Non testamentary," on p 35 above

Documents in language not understood by registering Officer

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

Local Amendment.—See Part XI A, sec. 70D (3) (a) below

Non-compliance with the section.—Failure to comply with the provisions of this section does not render the registration void It is no more than a "defect in procedure" within the meaning of sec 87 of the Act (*x*)

Documents containing interlineations, blanks, erasures or alterations

20. (1) The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration.

(2) If the registering officer registers any such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration

Earlier Registration Acts.—See sec 35 of Act 16 of 1864 and sec 20 of Act 20 of 1866, Act 8 of 1871 and Act 3 of 1877

Alteration.—If there is no suggestion that the alteration was improperly made after execution, the refusal by an executing party to initial an alteration, not materially affecting the instrument, is no ground for refusing registration (*y*)

(*w*) *Chamanbu v Multanchand* (1896) 20 Bom 562.

(*x*) *Sah Mukhun Lall v Sah Koondun Lall* (1875) 2 I A 210

(*y*) *In the Petition of T Venkataswami Naik* (1866) 4 Mad H C 101, 107

Where execution of a document containing an interpolation was admitted by all the executants before the Registrar, it was held upon the facts of the case that the interpolation was not such as to avoid the deed on the ground of material alteration (z).

Description of property and maps or plans

21. (1) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

(2) Houses in towns shall be described as situate on the north or other side of the street or road (which should be specified) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered.

(3) Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(4) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it is accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Local Amendments.—The section has been amended, in its application to the Presidency of Bombay, by sec 4 of the Indian Registration (Bombay Amendment) Act 5 of 1929, which came into force on the 22nd May 1929 The amendment is as follows —

"To sub section (2) of section 21 of the said Act [the Indian Registration Act, 1908,] the following shall be added, namely —

"In all city surveyed areas in the Bombay Presidency, houses and lands shall also be described by their cadastral survey numbers as in the city survey maps and records"

See also Part XI-A, Sec. 79D (3) (b), below.

Earlier Registration Acts.—See sec 21 of Act 20 of 1866, Act 8 of 1871 and Act 3 of 1877

(z) *Bhannessar Ram v Ramkhelawan* (1910) 12 Cal. L.J. 137, 5 I C. 654

S. 21

Acceptance for registration—Refusal to register under sec 19 or sec 35 must be distinguished from refusal to accept for registration under sec 20 or sec 21 The first thing to be done by the registering officer is to decide whether to accept or not to accept It is only after the acceptance for registration that he can consider the wider question arising under sec 35 on admission and denials and evidence, whether he should refuse to register (a) He should not deal with the question of acceptance for registration together with the question of refusal to register (b) Where a registering officer receives a document and the registration fee and endorses the payment on the document and examines the executing party to the document or issues a commission for his examination his action is tantamount to acceptance for registration (c)

Document relating to immoveable property—This section applies only to documents *relating to* immoveable property A document whereby a person agrees to register another document (d) or a document by which a Mahomedan lady agrees with her father that she will not make any claim on his death to "what properties there may be at your death (e) there being nothing on the face of the document to show that it relates to immoveable property, is not a document "relating to immoveable property" within the meaning of this section In the one case it is a personal covenant to do a particular act in the other it is a covenant not to claim as an heir In the first of these cases (f) Farran C J said "There is nothing on the face of the document [Exhibit B] which shows that the accompanying document referred to in it relates to immoveable property The registering officer would we think travel out of his functions if he were to institute an enquiry as to what the nature of Exhibit A [the document referred to] was"

Deed of trust—A deed of trust relating to immoveable property must for the purposes of registration contain a description sufficient to identify it (g)

Description sufficient to identify the property—In *Narasamma v Subbarayadu* (h) the High Court of Madras held that a description of property in a release passed to a Hindu widow by her husband's cousin *as "the property of the deceased" named in the document, is not a* sufficient description In *Narasimha v Ramalinga* (i) however, the same Court held that a description of property as "my family property" in a

(a) *Gangava v Sayava* (1896) 21 Bom 699 700
(b) *Abdool Hossein v Goolam Hossein* (1906) 30 Bom 304 312 313
(c) (1906) 30 Bom 304 313 *supra*
(d) *Tullockchand v Gokulbhoy* (1897) 21 Bom 724 728
(e) (1906) 30 Bom 304 314 *et seq* See also *Saiyed v Muhammad* (1909) 31 All 523 524 3 I C 506
(f) (1897) 21 Bom 724 728 *supra*
(g) See Indian Trusts Act 1882 s 5 and s 3 [definition of "registered"] and *Chockalingam v Chettyar* (1928) 6 Rang 113 107 I C 461 (1928) A I C 44
(h) (189) 18 Mad 364 367
(i) (1900) 10 Mad L J 104, 106

deed of partition, is sufficient In the same case the Court expressed the S. 21
opinion that it was enough that a property was described as the property bought or inherited from A B The learned judges said The description is to be sufficient to identify the property but as sec 22 of the Registration Act shows, it need not be a description of a local character It need not mention the street in which the house is or give the name or the superficial area It follows that the description is not required to be such as to indicate to one searching the register without further enquiry or information the precise property to which the entry relates In a still later case (j) A, a Hindu, claiming to be the reversionary heir of B and alleging that C was in wrongful possession of properties belonging to B sold for valuable consideration his reversionary rights in all the immoveable and moveable properties which were in his (B's) possession and enjoyment as belonging to him (B) at the time of his (B's) death in Zamin Palangur village It was held that the description of the properties was sufficient to identify them Following *Narasimha's* case, cited above, the High Court of Bombay held that a description of property in a release by a father to his son as all my moveable and immoveable properties is sufficient to identify the property (k) In an earlier case the same Court had held that a description of property in a release passed by a Mahomedan lady to her father as properties that may be at your death,' was sufficient to identify the property (l) The learned judge said 'It is not said in the document that such property is or shall be immoveable It may be that or moveable on the father's death And how are you to describe property which does not exist at the date of the document but which may possibly exist on the father's death ? To expect the parties to such a document to describe such property in the same way as property known to exist is to expect them to do the impossible, and the Legislature never requires parties to do that" This decision as well as the decision in the case where the words of description were 'my family property" may be supported on the ground that there was nothing *on the face of the document* to show that the document related to immoveable property In *Hoosein Abdul Rehman & Co* v *Lachmichand* (m), Fawcett, J , criticized the Bombay decisions and held that a general description of the kind under consideration cannot be sufficient in the case of any lands in *any area in the Bombay Presidency to which a survey has been extended*, in view of the rule made by the Local Government under sec 22 (1) requiring that such lands shall be described by reference to the Government map or survey (n) He also held that the provisions of secs 21 (1), 22 (2), 28, 64

(j) *Subbalakshmi* v *Narasimiah* (1927) 52 Mad L J 482 102 I C 360, (27) A M. 686
(k) *Parasharampant* v *Rama* (1910) 34 Bom 202, 207, 4 I C. 588
(l) *Abdool Hoossein* v *Goolam Hoossein* (1906) 30 Bom 304, 314 315
(m) (1925) 49 Bom. 40 84 I C 416, (25) A B 34
(n) See Bombay Government Notification, Revenue No 6412, dated 18th July 1910

S. 21 and 65 plainly contemplate that the document itself, or a schedule foot note or other annexture should contain a description of the item or items of property comprised in it sufficient to identify it or them and enable the registering officer to ascertain from such description whether any of the immoveable properties to which it relates is situate within his jurisdiction (o)

Turning now to the Allahabad High Court it is to be observed that the Local Government has made rules under sec 22 sub sec (1) That sub section was added in sec 22 of the Registration Act 3 of 1877 by the Amending Act 17 of 1899 Sub sec (2) of sec 22 provides that ' save as otherwise provided by any rule made under sub sec (1) failure to comply with the provisions of sec 21 (2) or sec 21 (3) shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify the property The said rules require that lands shall be described by giving *the name of the village pargana and the revenue district* in which the parcel of land is situated In *Syed* v *Muhammad* (p) *A* wrote a letter to *B* making a gift of her property to *B* and the property was described as all that I got from my father and mother and whatever *jaidad* (immoveable property) you have transferred in my name it was held that the rules were not complied with and the registering officer was justified in refusing to accept the document for registration But where the names of the village pargana and district are given and the rules thus complied with a mistake in the name of the tappa which need not be given at all, is a matter of no consequence (q) In a case before the rules were made it was held by the same Court that a description of property in an instrument of gift as all my interest in my father s estate was sufficient to identify the property (r) In a still earlier case it was held that a description of property in a bond as my wealth and property was sufficient to identify the property (s) A rule similar to the Allahabad rule has been made in the Bombay Registration Rules (t) Failure to comply with such a rule does not necessarily disentitle the document to be registered see sec 22 (2) The actual decision in *Sayed* v *Muhammad* may be supported on the ground that the description of the property was insufficient to identify it, at any rate from the description itself

We next turn to the decisions of the Calcutta High Court In *Baij Nath* v *Sheo Sahoy* (u) certain property was described in a mortgage bond as being towzi No 10 as paying a suddar jama of Rs 719 and as lying within the jurisdiction of thana Kotwali sub-district Bhagulpur Collector

(o) *Hoosein Abdul Rehman & Co* v *Lachmichand* (192) 49 Bom 40 at pp 58 60 81 I C 416 (2) A I R 31

(p) (1909) 31 All 3 3 I C 506

(q) *Laraitam Das* v *Lalessri* (1913) 3 All 250 18 I C 953

(r) *Beni Madho Singh* v *Jagat Singh* (1912) 10 All L J 33 35 16 I C 337

(s) *Jai Singh* v *Baljobind* (1887) 7 All W N 15 17 But see *Najibulla* v *Nusir* (1881) 7 Cal 196

(t) See I le 1

(u) (1891) 18 Cal 556 [F B].

of Bhagulpur The description was erroneous to this extent that the property was in reality situated in thana Amarpur sub district Banka and bore a sudder jama of Rs 919 15 0 In other respects the description was correct The document was registered by the sub registrar of Bhagulpur who was authorized under sec 7 of the Act to exercise the powers of the Registrar of Bhagulpur It was held by four out of five judges who constituted a Full Bench that the description was misleading and insufficient for the purposes of identification O Kinealy J said By section 22 the registration of a document in which the property is not properly described does not become invalid unless it cannot be properly identified and I consider that identification under section 22 means such identification *as is necessary to carry out the provisions of the Registration Act* In the present case the towzi number is correct but the sudder jama the thana and the sub-division are wrongly given There is nothing on the face of the deed which would enable the Registrar to carry out the provisions of section 66 and send a memorandum of the deed to the Sub Registrar in whose sub district the property is situated On the contrary the description is so misleading as to prevent the Registrar from doing so I do not think that a misleading description of this kind is saved by section 22 of the Registration Act, and so thinking I must hold that the registration is not valid as against the subsequent purchaser (*t*) Petheram C J differed from the rest of the Court The learned Chief Justice observed There can be no doubt that if the name of the mouzah and the towzi number are known, the property can be identified in the sense that it can be found from that description, and as that is so I think the provisions of section 21 clause (a) [now sub sec (1)] and of section 22 are complied with and the document not disentitled to registration I think that the description was sufficient to identify the property (*u*)

S. 21

Description partly sufficient and partly insufficient.—Where a document comprises several properties and the description is sufficient as to some, but insufficient as to others the registering officer must not refuse to accept the document for registration in its entirety (*x*)

Description in a foot-note—This section does not particularise where the description of the property shall be contained A description, therefore, in a foot note though signed by the transferee only, is sufficient If the document with the foot note is registered, the registration is valid Even if it be said that the registering officer was in error in accepting the document with such a description, the error cannot be held to invalidate the registration (*y*)

(*t*) *Baij Nath v Sheo Sahoy* (1891) 18 Cal 556 569

(*u*) *Ibid*, p 567

(*x*) *Kesava v Kannusamy* (1905) 15 Mad L J 30

(*y*) *Sheikh Adam v Jamnadas* (1893) 17 Bom 94 97, following *Sah Mukhun Lall v Sah Koondun Lall* (1875) 2 I A 210, 216, 25 W R 75, 77

S. 21

Annexures—Where a document is in the nature of a schedule or appendix to another document, the two documents can be registered as one But two distinct documents separately stamped and executed for different objects, cannot be so registered *A* executes and delivers two documents X & Y to *B* X being an agreement of equitable mortgage and Y an agreement that *A* will register document X, and that if he fails to do so, he will pay whatever *B* could claim under X if it had been registered X cannot be registered with Y as if X was an annexure to Y (*z*)

Property described by reference to another document—Where two instruments are contained in the same paper, and relate to the same property and are both presented for and in all other respects are entitled to registration it is not a sufficient ground for refusing registration that in the second document the property is described only by reference to the first Two documents X and Y are written on one sheet of paper, X being a mortgage bond executed by *A* in favour of *B* for Rs 150, and Y being a mortgage bond mortgaging a Collector s certificate issued in *A*'s name for a further loan of Rs 100 X contains a description of the mortgaged property Y does not but it refers to X The certificate mentioned in Y relates to the property described in X The description of the property in X must be taken to be incorporated by reference into Y, and the registering officer can not refuse to accept Y for registration on the ground that the description is not sufficient (*a*)

Suit under sec 77—In *Gangaia* v *Saraya* (*b*) the High Court of Bombay observed that there was a distinction between the two phrases, "refuse to register" found in secs 19 and 35 and "refuse to accept for registration" found in secs 20 and 21, and that the provisions of the Act which dealt with *acceptance* for registration invested the registering officer with a discretion with the exercise of which a civil Court had no power to interfere under sec 77 It was accordingly held that if a registering officer, acting under this section, refused to accept a document *relating to immoveable property* for registration on the ground that the description was not sufficient to identify the property, the Court had no power to enquire under secs 77 and 72 into the propriety of his order But the discretion, it was said, arose only if a document "related to immoveable property" If it did not so relate, the section did not apply and the discretion could not arise Therefore, if the registering officer refused to accept a document for registration on the ground

(*z*) *Tullockchand* v *Gokulbhoy* (1897) 21 Bom 724 730

(*a*) *In the Petition of T Venkatasami Naik* (1868) 4 Mad H C. 101 104 106 *Somasundaram* v *Rajappa* (1927) 52 Mad L. J 140 99 I C. 846 (27) A M. 369

(*b*) (1896) 21 Bom 699, *Abdool Hoossein* v *Goolam Hoossein* (1906) 30 Bom 304 312 313 But see sec 23 which also relates to refusal to accept a document, and *Raja* v *Anapurna* (1873) 10 Bom H C 98

that the description was insufficient in a case where it *did not relate to immoveable* property, the Court had power to enquire into the propriety of his order *Gangava* v. *Sayava* has now been definitely disapproved in later Bombay cases (c), and it has been held that for the purposes of sections 76 and 77 there was no distinction between "refuse to register" and "refuse to accept for registration". The view taken by the other High Courts has always been that secs. 76 and 77 apply not only to cases in which the registering officer has refused to register a document but also to cases in which he has refused to accept it for registration. Thus where a registering officer refused to accept a document *relating to immoveable property* for registration on the ground that the description was insufficient, it was held by the High Court of Madras that a suit could lie under sec. 77 of the Act (*d*). The learned judges said: "Sec. 76 (a) of the Registration Act shows by the cases excepted that cases of 'refusal to accept' are within the meaning of the words 'refusing to register'." In an Allahabad case a sub registrar refused to accept for registration a document *relating to immoveable property* on the ground that the description was not sufficient to identify the property. An appeal was made to the Registrar under sec. 72 who refused to order registration of the document on the same ground. A suit was then brought under sec. 77 and the Court held that the orders made both by the sub registrar and the Registrar were correct. It was not questioned in that case that sec. 77 applied to a case of refusal under the present section (*e*).

Whether registration void if description insufficient.—We propose to consider in this paragraph the question whether if a document relating to immoveable property does not contain a description of the property sufficient to identify the same, and it is accepted for registration and is registered, the registration is void. The observations of their Lordships of the Privy Council in *Sah Mukhun Lall* v. *Sah Koondun Lall* (*f*) are of great importance in this connection. In that case Sir Barnes Peacock in delivering the judgment of the Board said: "There can be no doubt that the registering officer acted in contravention of sec. 36 [now sec. 34] in registering the deed without the vendors having appeared before him; but it is not necessary for their Lordships to determine whether the registration was a nullity, or whether the error was one of which a stranger to the deed could take advantage. It may, however, be observed that there are no words in sec. 36 [now sec. 34] declaring that the registration of a deed shall be null and void if made without the appearance of the persons who executed

(c) *Maneklal* v. *Kasturbhai* (1929) 53 Bom. 644, 119 I. C. 601, (29) A. B. 365; *Hoosein Abdul Rehman* v. *Lachmichand* (1925) 49 Bom. 40, at p. 69, 84 I. C. 416, (25) A. B. 34.

(d) *Narasimha* v. *Ramalingama* (1900) 10 Mad. L. J. 104.

(e) *Saiyed* v. *Muhammad* (1909) 31 All. 523, 3 I. C. 506.

(f) (1875) 2 I. A. 210, 215 216, 24 W. R. 75, 77 78.

S. 21 it, and it is very doubtful whether the words of that section are not merely directory to the registering officer for the benefit of the parties to the deed, and whether his acting without the appearance of the parties and upon evidence, instead of the admission of the parties of the execution of the deed, was more than a defect in procedure within the meaning of sec 88 [now sec 87] Again, it is not clear that the words 'unless it shall have been registered in accordance with the provisions of this Act' in sec 49, are not, especially as regards strangers to the deed, confined to the procedure on 'admitting to registration' [ss 58 63] without reference to any matters of procedure prior to registration, or to the provisions of sec 19, 21, or 36 [now sec 34] of the Act, or other provisions of a similar nature In considering the effect to be given to sec 49, that section must be read in conjunction with sec 88 [now sec 87], and with the words of the heading of part 10, 'Of the Effects of Registration and Non registration,' (ss 47 50) Now, considering that the registration of all conveyances of immoveable property of the value of Rs 100 or upwards is by the Act rendered compulsory, and that proper legal advice is not generally accessible to persons taking conveyances of land of small value, it is scarcely reasonable to suppose that it was the intention of the Legislature that every registration of a deed should be null and void by reason of a non compliance with the provisions of sec 19, 21, or 36 [now sec 34] or other similar provisions It is rather to be inferred that the Legislature intended that such errors or defects should be classed under the general words 'defect in procedure' in sec 88 [now sec 87] of the Act, so that innocent and ignorant persons should not be deprived of their property through any error or inadvertence of a public officer, on whom they would naturally place reliance If the registering officer refuses to register, the mistake may be rectified upon appeal under sec 83 [now ss 72 76], or upon petition under sec 84 [now a suit under sec 77] as the case may be, *but if he registers where he ought not to register, innocent persons may be misled, and may not discover, until it is too late to rectify it the error by which, if the registration is in consequence of it to be treated as a nullity, they may be deprived of their just rights*

Sec 21 of the Registration Act 20 of 1866 referred to in the above passage is the same as sec 21 of the present Act But the Act of 1866 did not contain any provision corresponding to that contained in sec 22 of the present Act by which it is provided that failure to comply with the provisions of sec 21 (2) and (3) shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property It is not clear whether non compliance with the provisions of sec 21 referred to in the judgment of the Judicial Committee has reference only to sub-secs (2) and (3) of sec 21, or also to sub-sec (1) The High Court of Calcutta has held that if the subject matter of a sale, mortgage, etc, has not been identified at all for the purposes of

registration within the meaning of this section the registration is not valid (*g*) **S. 21**
The same High Court has also held that if a property situated in sub district *A* is described in the document as situated in sub district *B*, and the document is accepted for registration and is registered by the sub registrar of sub-district *B*, the registration is not valid (*h*) But it is otherwise if the description, though incomplete is sufficient to identify the property (*i*), and in a case where there was a mistake in the name of a village owing to the illegibility of the Urdu script the registration was held to be valid (*j*)

If the description instead of being given in the body of a document, is given in a foot note the registration is valid In such a case if the document is registered, the registration is not a nullity though the foot note is signed by the transferee alone At the most this amounts to a defect of procedure as held by the High Court of Bombay (*k*) following the Privy Council ruling in *Sah Mukhun Lall's* case

But what if the document *does not on the face of it relate to immoveable property*, and it is entered not in Book No 1 which is a Register of non testamentary documents relating to immoveable property but in Book No 4 which is a Miscellaneous Register, *e g* where the property is described as "the property of the deceased" (*l*) or "the property of myself and my daughter or the rest of my property" (*m*) ? In such cases it has been held by the High Court of Madras (*n*) and Calcutta (*o*) that the document cannot be said *to have been registered in accordance* with the provisions of the Act, and it cannot therefore affect any immoveable property alleged to be comprised in it having regard to sec 49 of the Act In the Calcutta cases the Court also observed that the fact that the bond was recorded in Book No 4 showed that it was not the intention of the parties that the immoveable property of the debtor should be charged In the Madras case, Best, J, said "The mere fact of registration is not, however, sufficient to cure defects arising from non observance of the requirements of section 21, so as to affect property not specifically described and which has passed into the hands of third parties, though as against the executant of the document, it might be enforceable on the principle *certum est quod certum reddi*

(*g*) *Nadar Lal* v *Baij Nath* (1927) 32 C W N 241 (28) A C 385
(*h*) *Baij Nath* v *Sheo Sahoy* (1891) 18 Cal 556
(*i*) *K I Galliara* v *C Thet* (1929) 7 Rang 118 117 I C 580 (29) A R 117
(*j*) *Sita Ram* v *Raj Narain* (1934) 150 I C 145 (34) A O 283
(*k*) *Shekh Adam* v *Jamnadas* (1893) 17 Bom 94 97
(*l*) *Narasamma* v *Subbarayudu* (1895) 18 Mad 364, *distinguished in Subbalakshmi* v *Narasimiah* (1927) 52 Mad L J 482 488 489, 102 I C 360 (27) A M 586
(*m*) *Najibulla* v *Nusir* (1881) 7 Cal 196, *Indra Bibi* v *Jain Sardar* (1908) 35 Cal 845
(*n*) (1895) 18 Mad. 364, 367, *supra*
(*o*) (1881) 7 Cal 196, 198, (1908) 35 Cal 845, 849 850 *supra* But see *Ram Sidh* v *Balgobind* (1887) 7 All W N 15, 17

S. 21 *potest* As in the present case the property has passed to a third party for consideration and not only is the description not as clear as is required by section 21, but the registration itself purports to be of property other than immoveable [the document having been entered in Book No 4] I think the plaintiff is entitled to a decree' The High Court of Bombay, however, has taken a different view In the Bombay case (*p*), a Hindu father transferred all my rights of ownership in my property" in favour of his son It was held that the description was sufficient a ruling which has been referred to in the notes on p 111 It was also held, following the Privy Council ruling in *Sah Mukhun Lall* that "the error of the sub registrar in registering the document in Book No 4 instead of Book No 1 should not be allowed to prejudice the plaintiff' It is not clear from the report whether there was any reference in the document to any immoveable property If there was no such reference, the document would be entered in Book No 4 which is a record of documents registered under cls (d) and (f) of sec 18 which *do not relate to immoveable property*, and not in Book No 1 which is a register of documents relating to immoveable property (see sec 51) If so it cannot be said that there was any error on the part of the registering officer

In a Madras case (*q*) *A*, a Hindu, alleging that he was the reversionary heir of *B* and that *C* was in wrongful possession of properties left by *B* sold for valuable consideration his reversionary rights in ' all the immoveable and moveable properties which were in his (*B* s) possession and enjoyment as belonging to him (*B*) at the time of his (*B* s) death in Zamin Palangur village The sale deed was entered in Book No 4 and not in Book No 1 as required by sec 51 It was held that the description of the properties in the deed was sufficient to identify the properties as required by sec 21 (1) and that the entry of the deed in Book No 4 instead of in Book No 1 was an error in mere procedure committed by the Registrar and that it did not render the registration invalid Again the Rangoon High Court held that a deed of gift which contained an accurate description of the immoveable property conveyed by the deed was validly registered although it was entered in Book No 4 instead of Book No 1 (*r*) Here it will be observed that the document related on the face of it to immoveable properties In the preceding paragraph we dealt with the case where the document did not on the face of it relate to immoveable property

Effect of the section on the doctrine of notice— The Explanations inserted in sec 3 of the Transfer of Property Act, 1882, make

(*p*) *Parasharampant* v *Rama* (1910) 34 Bom 202 207 4 I C 588

(*q*) *Subbalakshmi* v *Narasimiah* (1927) 52 Mad L J 482 102 I C 360 (27) A M 586

(*r*) *Lucy Moss* v *Mah Nyein May* (33) A R 418

S. 21

it clear that registration operates as notice of the registered instrument That Explanation is subject to the following provisos —

(1) that the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 and the rules made thereunder

(2) that the instrument or memorandum has been duly entered or filed, as the case may be in books kept under sec 51 of that Act, and

(3) that the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of the Act

It would seem therefore that a registered instrument giving an incorrect description of immoveable property would not operate as notice to subsequent purchasers, and it has been held that misplaced entries do not operate as notice (s) See in this connection Mulla s Transfer of Property Act notes (28) and (29) to sec 3 Even before the amendment of the Transfer of Property Act the Allahabad High Court held that the provisions of sec 21 were not merely directory but imperative (t) In the Allahabad case the learned judges said The object of registering a document is to give notice to the world that such a document has been executed and is in force Persons who may seek to acquire any property covered by such an instrument are entitled to have the instrument so clearly worded that they can, while searching the register, come upon the deed quickly and have no doubt as to its contents The object of the statute would be to a great extent nullified and innocent persons exposed to great hardship and loss if they [the words of the section] could be treated as purely directory

Sub-sec. (2): "Houses in town".—Failure to comply with the requirements of this section is not a sufficient ground to refuse the registration of a document if the description of the house is otherwise sufficient to identify it See sec 22 (2)

"House."—This ordinarily means a structure of a permanent character that is used or may be used for the habitation of men see Stroud s Judicial Dictionary, 2nd Ed, Vol 2, p 893 It may include an indigo factory (u) and a godown which is used as a residence for servants (v) In *Hoosein Abdul Rehman* v *Lachmichand* (w) Fawcett, J, following the definition in Stroud s Judicial Dictionary, held that it did not cover a godown which is intended and used merely for storing rice But on appeal (x), the godown

(s) *K V Galliara* v *U Thet* (1929) 7 Rang 118 117 I C 580, (29) A R 117

(t) *Saiyed* v *Muhammad* (1909) 31 All 523 526 3 I C 506 See in this connection *Beni Madho Singh* v *Jagat Singh* (1912) 10 All L J 33, 35 16 I C 337

(u) *Durga Singh* v *Bisheshwar* (1898) 24 All 218, 225

(v) *Dulchand Singh* v *The Secretary of State for India* (1916) 43 Cal 665, 37 I C 11

(w) (1925) 49 Bom 40, at p 54, 84 I C 416, (25) A B 34

(x) (1925) 49 Bom 40, at pp 72 73, 84 I C 416 (25) A B 34 *supra*

Ss 21, 22 was treated as a house , and it seems probable that the expression "house" is used in this section in a more comprehensive sense than Stroud s definition so as to cover at any rate buildings used for housing goods and animals, *e g* , a warehouse, cattleshed or henhouse

Sub sec (3) "Other houses and lands —Failure to comply with the requirements of this section is not necessarily fatal to registration unless any such requirement is one imposed by a rule prescribed by the Local Government under sec 22 (1) see sec 22 (2)

It has been held that lands include lands covered or partly covered by buildings other than houses (*y*) But on appeal in the same case this point was not dealt with and such a distinction is of little importance if the expression houses has the extensive meaning suggested above There can of course be a transfer of a super structure apart from the land on which it is situated ( )

Description of houses and land by reference to Government maps or surveys

22. (1) Where it is, in the opinion of the Local Government, practicable to describe houses, not being houses in towns, and lands by reference to a Government map or survey, the Local Government may, by rule made under this Act, require that such houses and lands as aforesaid shall, for the purposes of section 21, be so described

(2) Save as otherwise provided by any rule made under sub section (1) failure to comply with the provisions of section 21, sub section (2) or sub section (3), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify that property

Local Amendments —The section has been amended, in its application to the Presidency of Bombay, by sec 5 of the Indian Registration (Bombay Amendment) Act 5 of 1929 which came into force on the 22nd May 1929 The amendment is as follows —

In sub section (2) of section 22 of the said Act [the Indian Registration Act 1908] for the word Save the words Except in the case of city surveyed areas in the Bombay Presidency and except shall be inserted

(*y*) *Hossein Abdul Rehman* (Co v *Lachmichand* (192) 49 Bom 4) at p 5, 84 I C 416 (2) A B 31

( ) (192) 49 Bom 40 at pp 57 and 72 84 I C 416 (25) A B 31 *supra*

Earlier Registration Acts See sec 22 of Act 8 of 1871 and Act 3 of 1877 There was no corresponding provision in Act 20 of 1866 In *Narayana Swami Pillai's* case (a) Sir Adam Bittlestone ruled that the provisions in Act 20 of 1866 sec 21 as to the description of houses and lands are merely directory This decision found legislative authority in sec 22 of Act 8 of 1871 (b) That section however commenced with the words "Failure to comply with etc and so did sec 22 of Act 3 of 1877 Sub-sec (1) and the words save as otherwise provided by any rule made under sub-sec (1) were added in sec 22 of Act 3 of 1877 by sec 2 of the Amending Act 17 of 18[illegible] Sub-sec (1) provides for a description of houses other than houses in towns and of lands by reference to Government maps or surveys The object of the Amendment was to provide an easy and certain method of identification and to oblige parties to make use of it where it existed

Description sufficient to identify the property —Questions of misdescription non-description or insufficient description are questions of fact and cannot be raised for the first time in second appeal (c) See notes *under the same head to sec 21 on p* 110 above See also notes to sec 21, Whether registration void if description insufficient on p 115 above

"Save as otherwise provided by any rule" Failure to comply with the requirements of sec 21 (3) is not necessarily fatal to registration, unless any such requirement is one imposed by a rule prescribed by the Local Government under sec 22 (1) The rule however, must be one which, while saying that the property shall be described in a particular way should also say that if it is not so described it shall not be registered If it does not say so, the document may still be registered provided the description is sufficient to identify the property notwithstanding the particular direction in the rule (d)

(a) (1868) 4 Mad H C 91

(b) See *Chandra Kishore* v *Dinendra Nath* (1894) 1 Cal L J 126 132

(c) *Ironatha Nath* v *Nagendra Nath* (1924) 33 C W N 1211 125 I C 603 ('30) A C 235

(d) *Soma Sundran* v *Rajappa* (1927) 52 Mad L J, 140, 142 143, 99 I C 846, ('27) A M 369

PART IV.

Of the Time of Presentation.

S. 23

23. Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution

Time for presenting documents

Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final

Earlier Acts—See Act 8 of 1871 and Act 3 of 1877, sec 23, paragraphs 1 and 2, Act 20 of 1866, secs 22 and 23, and Act 16 of 1864, secs 17 18 and 19

Time of presenting document—This section provides that no document other than a will shall be accepted for registration unless presented within four months from the date of its execution In computing the period of four months, the day on which the document is executed should be excluded by virtue of sec 3 (2) of the General Clauses Act 1 of 1868 [now Act 10 of 1897, sec 9 (1)] (e)

The present section provides for a period of four months for *presenting* a document for registration Sec 25 provides for a further period of four months in cases of urgent necessity and unavoidable accident on payment of a fine Sec 34 provides that no document shall be registered unless the persons executing the document *appear* before the registering officer within the time allowed for presentation by secs 23 and 25 But the proviso to sec 34 allows a further period of four months, with the result that while the maximum period for presenting a document is eight months, that for the appearance of parties before the registering officer is twelve months (f)

If a deed is registered within the time allowed by the Act, it will not lose priority on the ground of delay to a subsequent deed registered earlier (g) See note under sec 47, "Registered documents operates from the date of execution", at p 163

(e) *Malik v Kala* (1890) Punj Rec No. 90

(f) *Tullockchand v Gokulbhoy* (1897) 21 Bom 724, 729

(g) *Surendranath Ghosh v Hari Lal Biswas* (1933) 60 Cal. 225 144 I C 103 ('33) A C 398

Date of execution. It is not essential for the registration of a document that it should be dated If the document does not bear the date of execution, oral evidence is admissible to prove the date (*h*) It sometimes happens that the date of execution is altered by the parties In such cases if the document is presented for registration within four months from the altered date though after four months from the original date, and the document is registered the registration is not void if no fraud was intended (*i*) But if the date is altered with the sole object of getting round the provisions of the section it is a fraud on the Registration law, and no registration obtained by means thereof is valid As regards certificates of sale it has been held that although as provided by O 21, r 94 [C P C 1882, sec 316] *such certificate is to bear date of the day on which the sale became* absolute, the period of four months under the present section is to be calculated from the date of its *execution* that is the day on which it is issued, and not the date on which the sale became absolute (*j*) S. 23

Document insufficiently stamped.— There is no provision in the Registration Act or in the Stamp Act which says that if the document when presented is insufficiently stamped the presentation shall be no presentation On the contrary the procedure provided is wholly inconsistent with that idea because what the procedure requires is that the registering officer to whom the document is presented receives it and makes his entry accordingly, he impounds it and sends it to the Collector, the Collector takes the necessary steps to compel payment of the proper stamp duty and the penalty, he then returns the document to the registering officer, who shall proceed with the matter The effect is that the presentation is a good presentation, though the actual registration is delayed " (*k*)

Time for completion of registration.—"Though the Statute makes it imperative to *present* an instrument for registration within four months from the date of its execution, no time is fixed within which a deed presented and accepted for registration must be *registered*, and, indeed, from the nature of *the requirements of the Act, the* period within which the registration must be completed could not have been fixed " (*l*)

Registration void if document presented after proper time.— If a document is presented for registration after the period provided in Part

(*h*) *Chandra Kishore* v *Directra Nath* (1894) 1 Cal L J 126

(*i*) *Gopal* v *Surendra* (1912) 16 Cal. W N 585, 587, 15 I C 460

(*j*) *Husaini Begum* v. *Mulo* (1883) 5 All 84

(*k*) *Shama Charan Das* v *Joyenoolah* (1885) 11 Cal 750, 754

(*l*) *Sah Mukhun Lall* v. *Sah Kundun Lall* (1875) 2 I A 210, 218, 24 W R 75, 78, *Shama Charan Das* v *Joye Noolah* (1885) 11 Cal 750, 754, *Luckhi Narain* v. *Satcourie* (1889) 16 Cal. 189, 192, in app from (1888) 15 Cal. 538

Ss. 23, 23A

IV of the Act [secs 23-26] and is registered, the registration is void. The act of accepting a document for registration after the expiration of the period mentioned in the Act and registering the same is not a "mere defect of procedure" within the meaning of sec 87. The registering officer acts without authority when he registers a document not presented within the aforesaid period (m)

Conduct of parties.—See notes under the same head to sec 25, on p 127 below

Re-registration of certain documents.

23A. Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered, and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the documents as if it had not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefor under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-registration and such document, if duly re-registered in accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration.

Provided that, within three months from the twelfth day of September, 1917, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section, whatever may have been the

(m) *U Aung Din v. Maung Aung Myint* (1933) 11 Rang 207, (33) A.I.R. 194 affirming 11 Rang 15, 141 I.C. 705, (33) A.R. 5; *Raya v. Annapurna* (1873) 10 Bom H.C. 98, *Bhagat Singh v. Ram Narain* (1883) Punj Rec No. 93

time when he first became aware that the registration of the document was invalid S. 23A

Re-registration This section is new It was inserted by the Indian Registration Amendment Act 15 of 1917 The amendment became necessary by reason of the decision of their Lordships of the Privy Council in *Jambu Prasad v Muhammad Aftab Ali Khan* (n) It was held in that case that when a document is presented for registration by an agent who is not authorised by a power of attorney in accordance with sec 33 of the Act the registering officer has no jurisdiction to register the document nor to endorse thereon a certificate under sec 60 such registration is invalid though the agent may have been accompanied at the time of presentation by the executant Before this decision it was usual to send a confidential servant with the executant to the registration office but care was not always taken that the document was *presented* by the executant or by an agent authorised by a power of attorney as required by sec 33 The amendment was made to remove the difficulty caused by the Privy Council decision The present section assumes that where a document is presented for registration by a person not duly empowered to present the same and the document is accepted and registered the registration is invalid In such a case the section provides that the document may again be presented for registration by any person claiming under it *within four months* from his first becoming aware that the registration of such document is invalid and it may be re registered In a subsequent case (o) before the Judicial Committee a security bond directed to be given under the provisions of *O 41 r 13 (2) (c)* of the Code of Civil Procedure and executed in favour of a District Judge, was presented for registration by a clerk of the Court It was held that the clerk was not a representative of the judge so as to be qualified under sec 32 of the Act to present the bond for registration and that the registration was invalid At the same time their Lordships observed that the case was one in which facilities should be given for the re registration of the bond under the present section

Re registration of a will as an authority to adopt—The Madras High Court applied the section to a case where a document registered as a will proved to be invalid as a will and was then re presented for registration by a son adopted under a power conferred by the document The Court held that such re registration was valid and that the section was not confined to cases where the registration was invalid owing to a defect in the power of an agent to present for registration (p)

(n) (1915) 42 I A 22 37 All 49 28 I C 422

(o) *Ma Shwe Mya v Maung Mo Hnaung* (1922) 49 I A 395 50 Cal 166 70 I C 937 (22) A PC. 309

(p) *Sudarsana Rao v Seetharamamma* (1933) M W N 1148

Ss. 24, 25

Documents executed by several persons at different times

24. Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution

Earlier Acts.—See proviso to sec 23 of Act 3 of 1877 and Act 8 of 1871, and ss 22 and 23 of Act 20 of 1866

Registration and re-registration—This section contemplates a partial registration of a deed, that is, partial as to the person executing it (q)

Provision where delay in presentation is unavoidable

25. (1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India, is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate

Earlier Acts.—See sec 24 of Act 3 of 1877 and Act 8 of 1871 and Act 20 of 1866 There was no corresponding provision in Act 16 of 1864

Finality of registrar's order.—This section gives a discretionary power to the Registrar to direct or refuse to direct that a document presented after four months shall be accepted for registration The Court cannot interfere with the discretion of the Registrar and if a Registrar has made a direction under this section that a document *shall be accepted* for registration, the Court cannot inquire in a suit under sec 77 into the propriety of that direction If it finds that a direction has been given by the Registrar, it will assume that the Registrar gave the direction on grounds which seemed to him to be sufficient When that direction has been given, and the fine has been paid the requirements of the law on the part of the applicant have been complied with No obligation lies upon the applicant to see that the Registrar shall properly perform the duties of his office If the Registrar is willing to direct the acceptance of the document even without inquiry made

(q) *Mohammed Ewaz v. Brij Lall* (1877) 4 I A 166 171, 173, 1 All. 465, 470, 471

of the applicant, it is not incumbent on the latter to assign the reasons for the delay in presenting the document for registration (r) **Ss. 25, 26**

Suit under sec. 77.—See note, "Finality of Registrar's order," above

Conduct of parties—The conduct of the parties may alter the character of a document but such conduct cannot affect the time of presenting a document for registration provided by sec 23 *A* agrees to sell his property to *B* and to execute a deed of conveyance thereof within thirty days It is provided by the agreement that if *A* fails to do so the agreement should be considered as itself the deed of conveyance After four months *A* finally refuses to execute the conveyance *B* thereupon presents the agreement, treating it as a conveyance for registration after four months The period of four months under sec 23 is to be computed not from the date of *A*'s default to execute the conveyance but from the date of its execution Hence if the Registrar acting under this section refuses to direct its registration his order will be upheld in a suit under sec 77 below (s)

Document remaining unregistered owing to fraud of executant—If a party fraudulently prevents a document from being presented for registration within the prescribed time by sec 21 then by this section he is precluded from contending that the document is bad for want of registration and he will not be allowed to take advantage of his own fraudulent conduct in preventing registration (t)

Documents executed out of British India

26. When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied—

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration fee, accept such document for registration

(r) *Durga Sing* v *Mathura Das* (1884) 6 All 460 *Tullockchand* v *Gokulbhoy* (1897) 21 Bom 724, 728 729, *Khair Muhammad* v *Abdul Ghaffar* (1901) Punj Rec No 44, p 145

(s) *Noban* v *Dhon* (1880) 5 Cal 820

(t) *Purgas Rai* v *Juggun Sing* (1867) 2 Agra, 401 [a case under Act 16 of 1864] *Kiam ud Din* v *Rajjo* (1889) 11 All 13 15, *Nagappa* v *Devu* (1890) 14 Mad 55 *Pothi* v *Nagaiya* (1915) 28 Mad LJ 423 per Sankaran Nair J at pp 433 434 and per Oldfield, J at pp 439-440 26 I C 625

Ss. 26, 27

Earlier Acts —This section corresponds with sec 25 of Act 3 of 1877 and Act 8 of 1871. The Registration Acts of 1864 and 1866 did not contain any such provision.

Within four months from its arrival in British India —Where both the Sub Registrar and Registrar are satisfied that the document first arrived in British India within four months of its presentation, and the document is accepted for registration the Court cannot in a suit under sec 77 inquire into the propriety of the Registrar's finding (u)

Documents executed out of British India —The provisions of this section indicate that the Registration Act applies to documents relating to immoveable property situated in British India, though they may be executed out of British India (v)

Wills may be presented or deposited at any time

27. A will may at any time be presented for registration or deposited in manner hereinafter provided

Earlier Acts —This section corresponds with sec 27 of Act 3 of 1877 and Act 8 of 1871 sec 26 of Act 20 of 1866 and sec 20 of Act 16 of 1864

'In manner hereinafter provided.' —See secs 40-46

Optionally registrable —See sec 18 (e)

(u) *Abdool Hossein v Goolam Hossein* (1906) 30 Bom 304 310

(v) *Venkatappayya v Venkata Ranga Rao* (1920) 43 Mad. 288, 301-302 59 I C 975

PART V.

Of the Place of Registration.

S. 28

Place for registering documents relating to land

28. Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c) and (d), and section 18, clauses (a), (b) and (c), shall be presented for registration in the office of a Sub Registrar within whose sub district the whole or some portion of the property to which such document relates is situate

Repealed Acts — See sec 28 of Act 3 of 1877 and Act 8 of 1871, sec 29 of Act 20 of 1866, and sec 21 of Act 16 of 1864

Registration void if no part of the property situate within the sub-district —This section provides that the documents mentioned in it, all of which relate to immoveable property shall be presented for registration in the office of the Sub Registrar within whose sub district the whole or some portion of the property to which the document relates is situate If no part of the property is situate within the sub district where it is registered, the registration is void (*w*)

"Some portion"—This section is satisfied by registration being effected in the place where any portion of the registered property is situate It is not necessary that such portion should be a substantial portion The words " within whose district the whole or some portion of the property to which such document relates is situate ' do not show an intention that there should be any inquiry as to whether the place where the document was registered was the place where what may be called some substantial portion of the property is situate, an enquiry of that kind might very frequently lead to considerable difficulty It appears from the provisions of secs 64, 65 and 66 that it was the intention of the Legislature that it should be sufficient that the registration be made in the place where some portion of the property—not a substantial portion but where *any* portion of the

(*w*) *Harendra Lal Roy Chowdhury* v *Hari Dasi Debi* (1914) 41 I A 110, 120, 41 Cal. 972 988 23 I C 637, *Joginee Mohun* v *Bhoot Nath* (1902) 29 Cal 654, *Baijnath* v *Sheo Sahoy* (1891) 18 Cal. 556, *Beni Madhub* v *Khatir* (1887) 14 Cal 449, *Har Bhagwan* v *Hukam Singh* (1922) 3 Lah. 242, 255 256 68 I C. 769 (22) A L. 243 The decisions in *Sheo Shunkur* v *Hirdey* (1879) 6 Cal. 25, *Har Sabhai* v *Chunni* (1881) 4 All 14, *Veerappa* v *Kadiresan* (1913) 24 Mad L. J 232, 18 I C 601, *Kasambridas* v. *Kidarnath* (1883) Punj Rec No 67, p 199, *Basheshar Das* v. *Bhagwan Das* (1898) Punj Rec No 44 p 152, are no longer law

S. 28 property is situate, leaving it to the Sub Registrar and the Registrar to take such further action as may be necessary under the sections referred to above (x)

Property situate partly within and partly outside British India.—A document relating to immoveable property situate partly within and partly outside British India may be registered under this Act (y)

Fictitious inclusion of property.—It sometimes happens that the parties to a deed include in the deed a parcel described as situated in a particular place, but which does not in fact exist, and get the document registered in the office of the sub registrar within whose sub district the parcel is alleged to be situated In such a case, it has been held that if the fictitious entry was intentionally made use of by the parties for the purpose of obtaining registration in a sub district where no part of the property actually transferred and intended to be transferred in fact exists, it is a fraud on the registration law, and no registration obtained by means thereof is valid The leading case on the subject is *Harendra Lal Roy Chowdhuri v Hari Dasi Debi* (z), decided by the Privy Council in 1914 In that case a mortgage deed, executed in 1913, purported to mortgage various properties including one therein described as No 25, Guru Das Street in Calcutta and also described by metes and bounds There was no property in Calcutta known as No 25, Guru Das Street, and the mortgagor never had any title to the property as described by metes and bounds None of the other properties included in the mortgage was situated in Calcutta The mortgage-deed was registered in the office of the sub registrar of Calcutta There was no evidence that the said property had been included in the mortgage by mistake Their Lordships held that the said property was in fact a fictitious entry and represented no part of the properties which the mortgagor possessed or intended to mortgage or that the mortgagee intended to form part of his security, and that the registration was invalid The Allahabad High Court has held that where the property is non existent, the fact that the fraud was entirely on the part of the transferor and that the transferee was not aware of the fictitious nature of the property included in the document for the purpose of having it registered in the office of a particular sub registrar will not affect the question of the invalidity of the registration (a)

(x) *Hari Ram v Sheodial Ram* (1889) 16 I A 12, 11 All 136, reversing (1885) 7 All 590, *Gulzari Lal v Daya Ram* (1887) 9 All 46, 50, *Ram Sumran v. Gobind Das* (1926) 5 Pat 646, 99 I C 782, (26) A P. 582.

(y) *Gopal v. Annabhai* (1900) 25 Bom 50

(z) (1914) 41 I A 110, 41 Cal. 972, 23 I C 637, *Jagannath v. Ram Nath* (1914) 12 All L J 913, 917, 26 I C 52, *Binsraj v Rylans* (1914) 12 All L J 918, 24 I C 451

(a) *Basir Singh v Loshar Lal* (1924) 22 All. L. J 241, 78 I C 265, (24) A.A 373

In *Harendra Lal Roy Chowdhuri*'s case, the fictitious entry was of a parcel which did not in fact exist There are cases, however, in which a property included in a deed does exist but the transferor has no title thereto, and that is the only property situate within the sub district in which the document is registered the other properties transferred by the document being all situate outside that sub-district Here again if none of the parties intended that that property should pass by the transferor to the transferee, and the property was included in the deed solely for the purpose of obtaining registration in that sub district it is a fraud on the registration law, and the registration is void (*b*) But it is quite different if the transferor believed *bona fide* when the transfer was made that he had a good title to the property but it subsequently transpires that the title was not in him A mere failure to make a good title to property dealt with by the instrument and which both parties had intended should form part of the transfer does not render the registration invalid (*c*) The leading case on this subject is *Biswanath Prashad v Chandra Narayan Choudhuri* (*d*) decided by the Privy Council in 1921 In that case a mortgage bond for Rs 8 000 was registered in the Mozufferpur district the only property within that district which the bond purported to mortgage was a one kauri share in a village The mortgagor had bought that share for Rs 50 shortly before executing the mortgage and had paid the price but there was no registered instrument of transfer nor delivery of possession as required by sec 54 of the Transfer of Property Act 1882 The share was included in the bond in order that registration might be effected in the Mozufferpur district and the parties did not intend that it should vest in the mortgagor or pass under the mortgage It was held that the mortgage bond was not validly registered, and therefore inoperative But what if the share had belonged in **S. 28**

(*b*) *Biswanath Prashad v Chandra Narayan Choudhuri* (1921) 48 Cal 509 48 I A 127 60 I C 833 (21) A. PC 8 *Mangali Lal v Ibid* (1917) 39 All 523 41 I C 3, *Ram Lal v Tamkin* (1919) 41 All 385 49 I C 543 *Amanat Ali v Sadla Bux* (1912) 9 All L J 766 16 I C 108 *Kunhi Sankaran v Narayanan* (1920) 43 Mad 405 410 55 I C 86 *Husensaheb v Hasansaheb* (1926) 28 Bom L.R 75 43 I C 218 (28) A B 165 *Lala Parshotam das v Saiyed* (1929) 4 Luck. 13 112 I C 273 (28) A O 439 *Jagdeo Sahu v Malabir Prasad* (1934) 13 Pat 111 (34) A.P 127

(*c*) *Bisuanath Prashad v Chandra Narayan Choudhuri* (1921) 48 Cal 509 516 48 I A 127 133 63 I C 770 (21) A I C 8 *Pahladi Lal v Musammat Larashi* (1919) 41 All. 22 48 I C 200, *Brojo Gopal v Abbilash* (1910) 14 Cal W N 532 5 I C 127, *Musammat Pan Dai v Ram Chandrabali* (1919) 4 Pat L J 433 52 I C 446 *Venkata v Peda Venkata* (1924) 46 Mad L. J 12 77 I.C 464 (24) A M 281, *Mst Jasoda v Janak Misir* (1925) 4 Pat 394 92 I C 1034 (25) A.P 787 *Rama Nathan v Delhi Badaha* (1931) 60 Mad L. J 302, 131 I C 840 (31) A M 335

(*d*) (1921) 48 Cal. 509 48 I A 127, 63 I C 770 (21) A.PC 8

S. 28 fact to the mortgagor but neither party intended to treat it as part of the mortgage security and it was included in the document solely for the purpose of obtaining registration in the Mozufferpur district In such a case also the *Privy Council have held that the registration is invalid (e)* Before this decision there were decisions of the High Courts of Madras (*f*) Allahabad (*g*), and Lahore (*h*) to the same effect But the High Court of Bombay had held that a portion of the property being in fact within the jurisdiction no evidence could be led as to the intention of the parties and the registration is valid (*i*) Again the mortgagor may include in the document property to which he knows he has no title in order to obtain registration in a particular district, while the mortgagee is misled and believes the property to belong to the mortgagor and to be part of his security As to this it has been held that in the absence of collusion between the mortgagee and the mortgagor the registration is not vitiated (*j*) The same principle has been applied to a case in which a small piece of land was included along with other big areas of lands in a deed of trust executed by a person for the benefit of his children, it not having been proved that the trustees were aware that the settlor had no title to the small piece of land (*j*1) Where a person *bona fide* buys property for the purpose of facilitating registration of a document and also *bona fide* includes it in the deed of transfer, the registration is valid, although the motive for the purchase was merely to secure the registration at a particular place (*k*)

Plea that registration is invalid may be inadmissible—*A* sells immoveable property to *B* and delivers possession to *B*, but the parties include in the deed a small parcel which does not belong to *A* and which is situate in another place in order to obtain registration in the office of the sub-registrar of that place *A* subsequently sues *B* to recover possession *B* relies on the sale deed and *A* pleads that it is inadmissible as it is not validly registered This plea is not open to *A* for *nemo allegans turpitudinem suam*

(*e*) *Collector of Gorakhpur* v *Ram Sundar* (1934) 32 All L J 779, 150 I C 545, (34) A PC 157, reversing 28 All L J 724, 126 I C 237, (30) A A 797

(*f*) *Nara Simha Rao* v *Rajunna* (1920) 43 Mad 436, 56 I C 719 *Rama Rao* v *Vedaya* (1923) 46 Mad 43, 73 I C 188, (23) A M 447

(*g*) *Mukat Nath* v *Shyam* (1929) 27 All L J 801, 117 I C 341, (29) A A [illegible]

(*h*) *Godha Ram* v *Sadh Singh* (1929) 10 Lah 381, 116 I C 457, (29) A L 812

(*i*) *Vishvanathbhat* v *Malappa* (1925) 49 Bom 821, 92 I C 628, (25) A B 514

(*j*) *Venkata* v *Veli Venkata* (1924) 46 Mad L J 12, 77 I C 461, (24) A M 281 *Appa Rao* v *Venkatarama Rao* (1931) 54 Mad 352, 129 I C 245, (31) A M 45.

(*j*1) *Chhotalbhai* v *Dalubhai* (1934) 36 Bom L R 738

(*k*) *Chellalingam* v *Athappa* (1927) 50 Mad 800, 105 I C 424, (27) A M 663, *Durga Prasad* v *Rameshar* (1924) 46 All 754, 82 I C 213, (24) A A 897

audiendus est, i e, no one alleging his own baseness ought to be heard *B* is entitled to remain in possession for *in pari delicto potior est conditio possidentis*, i e, in equal fault the condition of the possessor is more favourable (*l*) **Ss. 28-30**

Place for registering other documents

29. (1) Every document other than a document referred to in section 28, and a copy of a decree or order, may be presented for registration either in the office of the Sub Registrar in whose sub district the document was executed, or in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered

(2) A copy of a decree or order may be presented for registration in the office of the Sub Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered

Earlier Acts—See sec 29 of Act 3 of 1877 and Act 8 of 1871 sec 30 of Act 20 of 1866 and sec 22 of Act 16 of 1864

Registration by Registrars in certain cases

30. (1) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him

(2) The Registrar of a district including a Presidency town and the Registrar of the Lahore District may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates

Earlier Acts.—See sec 30 of Act 3 of 1877 and Act 8 of 1871, secs 31 and 32 of Act 20 of 1866, and sec 26 of Act 16 of 1864

"**Any Registrar.**"—This expression includes a sub registrar authorized under sec 7 to exercise powers of a Registrar (*m*)

(*l*) *Venkatasuami* v *Venkata Subbayya* (1932) 55 Mad 507, 139 I C 404 (32) A M 311

(*m*) *Jogeshwar* v *Rai Radha* (1906) 3 Cal L J 165, *Kedar Nath* v *Bidla* (1923) 38 Cal L J 355, 70 I C 583 (24) A.C. 348

Ss. 30, 31

Discretion.—If a Registrar registers a document which might be registered by a Sub-registrar subordinate to him it is not necessary for him to state in the registration endorsement that he is doing so in the exercise of his discretion. If the omission is a defect of procedure it is saved by sec. 87 of this Act (*n*).

Registration or acceptance for deposit at private residence.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit.

Provided that such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

Earlier Acts.—See sec. 31 of Act 3 of 1877 and Act 8 of 1871, sec. 33 of Act 20 of 1866, and sec. 65 of Act 16 of 1864.

"Any person desiring to present a document"—The corresponding words in sec. 31 of Act 8 of 1871 were "any person intending to register any document." These words were held to include not only the person or persons in whose favour a document was executed but also any person or persons executing the same (*o*).

Under rule 33B of the Bombay Registration Rules a registering officer is authorized also to accept a deed for registration at "his private residence or the private residence of some person other than himself", but it is open to question whether so far as this goes beyond the only case mentioned in this proviso viz. attending at the residence of any person desiring to present a document etc., the rule is not inconsistent with the Act, and therefore not valid under sec. 69. On the other hand if the registration is otherwise made at the Registering Officer's office an irregular presentation at his residence would probably be held to be a mere "defect" within the meaning of sec. 87 below (*p*).

"Special cause"—The registering officer is the judge of the sufficiency of the special cause and, if he has satisfied, the Court has no power to question his decision on that point. Assuming that the discretion was not rightly exercised by him it is a mere defect of procedure within the meaning of sec. 87 (*q*).

(*n*) *[illegible]* v. *[illegible]* (1931) 58 Cal 173, 133 I C 110, (31) A C 478.

(*o*) *Isa* v. *Jan Khatija* (1882) 6 Bom 96. See *Majid Husain* v. *Mussammat Fazl un Nissa* (1886) 16 I A 10, 16 Cal 468.

(*p*) See cases cited in f. n. (o) above.

(*q*) (1882) 6 Bom 96 *supra*.

PART VI.

Of Presenting Documents for Registration.

S. 32

Persons to present documents for registration.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office —

(a) by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign of such person, or

(c) by the agent of such person, representative or assign, duly authorized by power of-attorney executed and authenticated in manner hereinafter mentioned

Earlier Acts —See sec 32 of Act 3 of 1877 and Act 8 of 1871, sec 34 of Act 20 of 1866, and sec 28 of Act 16 of 1864

Proper registration office —See sections 28 31

Registration invalid if presentation unauthorized —' The Registration Act has imposed several conditions regulating the presentation of documents for registration, and it is of great importance that those conditions framed with a view to meet local circumstances, should not be weakened or strained on the ground that they may appear to be exacting and strict ' (r) Sec 32 is the first section dealing with the matter " When the terms of sec 32 are considered with due regard to the nature of registration of deeds, it is clear that the power and jurisdiction of the registrar only come into play when he is invoked by some person having a direct relation to the deed It is for those persons to consider whether they will or will not give to the deed the efficacy conferred by registration The registrar could not be held to exercise the jurisdiction conferred on him, if, hearing of the execution of a deed, he got possession of it and

(r) *Chhotey Lal* v *Collector of Moradabad* (1922) 49 I A 375 378 | 44 All. 514 517, 69 I. C 44, (22) A PC 279

Ss. 30, 31

Discretion.—If a Registrar registers a document which might be registered by a Sub registrar subordinate to him it is not necessary for him to state in the registration endorsement that he is doing so in the exercise of his discretion If the omission is a defect of procedure it is saved by sec 87 of this Act (n)

Registration or acceptance for deposit at private residence

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit

Provided that such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will

Earlier Acts.—See sec 31 of Act 3 of 1877 and Act 8 of 1871, sec 33 of Act 20 of 1866 and sec 65 of Act 16 of 1864

"Any person desiring to present a document"—The corresponding words in sec 31 of Act 8 of 1871 were any person intending to register any document These words were held to include not only the person or persons in whose favour a document was executed but also any person or persons executing the same (o)

Under rule 33B of the Bombay Registration Rules a registering officer is authorized also to accept a deed for registration at ' his private residence or the private residence of some person other than himself , but it is open to question whether so far as this goes beyond the only case mentioned in this proviso i.e. attending at the residence of any person desiring to present a document etc , the rule is not inconsistent with the Act, and therefore not valid under sec 69 On the other hand, if the registration is otherwise made at the Registering Officer's office an irregular presentation at his residence would probably be held to be a mere "defect" within the meaning of sec 87 below (p)

"Special cause"—The registering officer is the judge of the sufficiency of the special cause and if he has satisfied the Court has no power to question his decision on that point Assuming that the discretion was not rightly exercised by him it is a mere defect of procedure within the meaning of sec 87 (q)

(n) *Nilapalarani* v. *Nandarani* (1931) 58 Cal. 133, 133 I.C. 110, ('31) A.C. 478

(o) *[illegible]* v. *[illegible] Khatija* (1882) 6 Bom. 96 See *Majid Hasan* v. *Musammat [illegible]* (1886) 16 I.A. 19, 16 Cal. 468

(p) See cases cited in f. n. (o) above

(q) (1882) 6 Bom. 96, *supra*

PART VI.

Of Presenting Documents for Registration.

S. 32

Persons to present documents for registration.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration office,—

(a) by some person executing or claiming under the same, or in the case of a copy of a decree or order, claiming under the decree or order, or

(b) by the representative or assign of such person, or

(c) by the agent of such person, representative or assign, duly authorized by power of attorney executed and authenticated in manner hereinafter mentioned

Earlier Acts—See sec 32 of Act 3 of 1877 and Act 8 of 1871 sec 34 of Act 20 of 1866 and sec 28 of Act 16 of 1864

Proper registration office—See sections 28 31

Registration invalid if presentation unauthorized— The Registration Act has imposed several conditions regulating the presentation of documents for registration, and it is of great importance that those conditions framed with a view to meet local circumstances, should not be weakened or strained on the ground that they may appear to be exacting and strict (r) Sec 32 is the first section dealing with the matter "When the terms of sec 32 are considered with due regard to the nature of registration of deeds, it is clear that the power and jurisdiction of the registrar only *come into play* when he is invoked by some person having a direct relation to the deed It is for those persons to consider whether they will or will not give to the deed the efficacy conferred by registration The registrar could not be held to exercise the jurisdiction conferred on him, if, hearing of the execution of a deed, he got possession of it and

(r) *Chhotey Lal v Collector of Moradabad* (1922) 49 I A 375 378 | 44 All. 514 517, 69 I. C 44 (22) A PC 279

S. 32 registered it, and the same objection applies to his proceeding at the instigation of a third party who might be a busybody' (s)

It is clear from the passages cited above that a registering officer has no jurisdiction to register a document unless it is presented for registration by one of the persons described in sec 32 The terms of secs 32 and 33 are imperative and a presentation of a document for registration by a person who is not entitled to do so under sec 32 does not give to the registering officer the indispensable foundation of his authority to register the document If a document is presented for registration by one who is not entitled to do so under sec 32 the registration is invalid The absence of a party legally entitled to present a deed for registration is not a mere defect in procedure falling under sec 87 of the Act The error is of a more radical nature and it avoids registration (t) A minor claiming under a document is entitled to present it for registration (u) But presentation by the pleader who has no power of attorney from the executing party to present the document is not a presentation within this section (v) The provisions of the Act are very carefully designed to prevent forgeries and the procurement of conveyances or mortgages by fraud or undue influence, and though it may seem somewhat technical to insist upon exact compliance with the provisions of the Act it is necessary so to do (w)

Presenting document for registration—It has been stated above that if a document is presented to a registering officer by a person not entitled to do so and the document is registered the registration is invalid The 'presenting' of a document within the meaning of this section includes the physical act of delivering the document to the registering officer for registration A document may be presented by the person executing it or by the person in whose favour it is executed, or, it may be

(s) *Mujibunnissa* v *Abdul Rahim* (1901) 28 I A. 15 22 23 23 All 233 241 242

(t) (1901) 28 I A 15 23 All. 233 *supra* *Ishri Prasad* v *Baijnath* (1906) 28 All 707 *Jambu Parshad* v *Muhammad Aftab Ali Khan* (1915) 42 I A 22 37 All 49 28 I C 422 affmg (1912) 34 All 331 15 I C 881, *Khalil ud Din* v *Jetanni Bibi* (1913) 35 All 34 17 I C 274 *Mst Amir Begum* v *Mst Hussain Bibi* (1921) 2 Lah 7 10 78 I C 333 (22) A L 98 *Ambica* v *Shri* *nivas* (1921) 26 Cal W N 364 374 68 I C 774 (22) A PC 135 The decisions to the contrary in the following cases are no longer law *Malik* v *Kala* (1890) Punj Rec No 90 p 273 *Hardei* v *Ram Lal* (1889) 11 All. 319, *Ikbal Begum* v *Shah Sundar* (1882) 4 All 384 *Fekiel* v *Ananda* (1922) 50 Cal 180 70 I C 714, (23) A C 35

(u) *Chinnammal* v *Venkayamma* (1933) 64 Mad L J 637 142 I C 765 (33) A M 407

(v) *Halima Bee* v *Khairunnissa* (1927) 3 Rang 398 91 I C 644 (26) A R 17

(w) *Bharat Indu* v *Hamid Ali Khan* (1920) 47 I A 177 182, 42 All. 487 492, *Ganesh Lal* v *Khetramohan* (1926) 53 I A 134 5 Pat 585 95 I C 839 (26) A PC 56

presented by the agent of such person duly authorized by a power of attorney to present it for registration. If it is presented by an agent who is not authorized by a power of attorney executed and authenticated in accordance with sec. 33 or by an agent who holds a power of attorney which does not empower him to present documents for registration the registration is invalid. Presenting a document for registration under sec. 32 and attending before a registering officer to admit execution under sec. 34 are quite distinct acts. As observed by their Lordships of the Privy Council in *Jambu Parshad* v. *Muhammad Aftab Ali Khan* (x), "executants of a deed who attend a registrar or sub-registrar merely to admit that they have executed it cannot be treated, for the purposes of sec. 32 of Act III of 1877, as presenting the deed for registration. They no doubt would be assenting to the registration, but that would not be sufficient to give the registrar jurisdiction." The facts disclosed by the judgment of the Privy Council in this case are as follows:—*M* executes a mortgage to *L*. The deed is presented to a registering officer for registration by *N*. *N* holds a power of attorney from *L*, the mortgagee, but the power does not empower him to present documents for registration. *M*, the mortgagor, is present when the deed is presented by *N*, but he is there only for the purpose of admitting execution of the deed. *M* admits execution of the deed, and it is registered. The registration is invalid for the document was presented by a person not legally entitled to do so. *M* being the person executing the deed, could have, no doubt, presented the deed for registration but he did not appear before the registering officer to do so. He attended merely for admitting execution. The presentation being unauthorized, *M*'s attendance for the purpose of admitting execution cannot be treated as attendance for the purpose of presenting the document for registration. In the case of *Bharat Indu* v. *Hamid Ali Khan* (y), decided a few years later by the Privy Council, the mortgagor was ill and sent the mortgage deed by a servant, who was not duly authorized, to the sub-registrar to be registered. The sub-registrar received the deed on the 4th and went personally to the house of the mortgagor on the 6th. The mortgagor admitted execution and the sub-registrar registered the deed as presented on the 4th. Lord Buckmaster observed in the course of the argument—"Presentation is a question of fact requiring no formality. The servant really wrongly handed over the document to the registrar. He should have merely told him to go to the house." Lord Phillimore in the course of the judgment said that the presentation by the servant was inoperative, but not injurious to the validity of the subsequent presentation. In conclusion their Lordships treated the acceptance by the sub-registrar of the deed on the 4th as an irregularity and held that the deed S. 32

(x) (1915) 42 I.A. 22, 29, 37 All. 49, 56, 28 I.C. 422.

(y) (1920) 47 I.A. 177, 42 All. 487, 58 I.C. 386, (21) A.PC 93 followed in *Yasia Bibi* v. *Syed* (1924) 46 All. 743, 92 I.C. 345 (24) A.A. 799 and in *Barkhurdar* v. *Mest Sat Bharai* (1931) 132 I.C. 881, (31) A.L. 677.

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(u) *Chinnammi* v *Venkayamma* (1933) 64 Mad L J 637 142 I C 765, (33) A M 407

(v) *Halir a Bee* v *Khairunnissa* (1925) 3 Rang 398 91 I C 644 (26) A R 17

(w) *Bharat Indu* v *Hamid Ali Khan* (1920) 47 I A 177, 182, 42 All 487 492, *Ganesh Lal* v *Khetra Mohan* (1926) 53 I A 134 5 Pat 585 95 I C 839 (26) A PC 56

presented by the agent of such person duly authorized by a power of attorney to present it for registration. If it is presented by an agent who is not authorized by a power-of attorney executed and authenticated in accordance with sec 33 or by an agent who holds a power of attorney which does not empower him to present documents for registration the registration is invalid. Presenting a document for registration under sec 32 and attending before a registering officer to admit execution under sec 31 are quite distinct acts. As observed by their Lordships of the Privy Council in *Jambu Parshad* v *Muhammad Aftab Ali Khan* (x) "executants of a deed who attend a registrar or sub registrar merely to admit that they have executed it cannot be treated, for the purposes of sec 32 of Act III of 1877, as presenting the deed for registration. They no doubt would be assenting to the registration but that would not be sufficient to give the registrar jurisdiction." The facts disclosed by the judgment of the Privy Council in this case are as follows —M executes a mortgage to L. The deed is presented to a registering officer for registration by N. N holds a power of attorney from L the mortgagee, but the power does not empower him to present documents for registration. M the mortgagor, is present when the deed is presented by N but he is there only for the purpose of admitting execution of the deed. M admits execution of the deed, and it is registered. The registration is invalid for the document was presented by a person not legally entitled to do so. M being the person executing the deed, could have, no doubt presented the deed for registration but he did not appear before the registering officer to do so. He attended merely for admitting execution. The presentation being unauthorized M's attendance for the purpose of admitting execution cannot be treated as attendance for the purpose of presenting the document for registration. In the case of *Bharat Indu* v *Hamid Ali Khan* (y), decided a few years later by the Privy Council, the mortgagor was ill and sent the mortgage deed by a servant, who was not duly authorized, to the sub registrar to be registered. The sub registrar received the deed on the 4th and went personally to the house of the mortgagor on the 6th. The mortgagor admitted execution and the sub registrar registered the deed as presented on the 4th. Lord Buckmaster observed in the course of the argument—"Presentation is a question of fact requiring no formality. *The servant really wrongly handed over the document to the registrar.* He should have merely told him to go to the house." Lord Phillimore in the course of the judgment said that the presentation by the servant was inoperative, but not injurious to the validity of the subsequent presentation. In conclusion their Lordships treated the acceptance by the sub registrar of the deed on the 4th as an irregularity and held that the deed

S. 32

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(y) (1920) 47 I A. 177, 42 All. 487, 58 I C 386, ('21) A PC 93, followed in *Yasia Bibi* v *Syed* (1924) 46 All. 743, 92 I. C 345 ('24) A. A. 799 and in *Barkhurdar* v *Mst Sat Bharai* (1931) 132 I. C 881, ('31) A L. 677

S. 32 was validly presented on the 6th *Jambhu Prasad*'s case was distinguished on the ground that the admission of execution was not by a person "who desired to present and who purported to present" The distinction is a very subtle one, and it is difficult to understand why if the executant of a deed is present when the deed is presented by an unauthorized agent and admits execution the deed should not be considered to have been presented by him This is the view taken in a subsequent Allahabad case (z) where *Jambu Prasad*'s case is explained on the ground that the judgment of the High Court shows that the mortgagor was not physically present when the deed was presented (a) Previous decisions of the Allahabad High Court had also held that if a document was presented for registration by an unauthorized person the registration was valid if a person competent to present was present before the registering officer and assented with full knowledge of what was being done (b) A great many documents had been registered in reliance on these rulings and as the registration was supposed to be invalid under *Jambu Prasad*'s case section 23A was inserted in the Act—See note to sec 23A

"The persons executing the document."—The expression used in secs 32, 34 and 35 is 'the persons executing,' not "the parties executing" A person therefore who executes a document under a power of attorney is "the person executing" within the meaning of this section, and he may therefore present the document under this section and appear before the registrar under sec 34 on behalf of the donor of the power Such a power-of-attorney does not require to be authenticated as provided by sec 33 It has accordingly been held that where a mortgage by *A* and *B* as parties thereto is executed by *A* on behalf of himself and on behalf of *B* under a power of attorney from *B*, *A* is competent to present the document under sec 32 and to appear and admit execution before the registrar under sec 34 on behalf of himself and *B* The power of attorney does not require to be authenticated in the manner provided by sec 33 of the Act (c)

Death of party before registration.—Where a party executing a deed dies after execution thereof, and a person who held a power of attorney

(z) *Deo Singh* v *Mst Pani Dulaiya* (1931) 29 All L J 909, 135 I. C. 232, (32) A A 63

(a) *Jambu Prasad* v *Muhammad Aftab Ali Khan* (1912) 34 All 331, 18 I C 126

(b) *Wilaiti Begam* v *Fazal* (1912) 9 All. L J 148, 13 I C 961, *Nath Mal* v. *Abdul* (1912) 34 All. 355, 14 I C 812, *Karta Kishan* v *Harnam Chand* (1913) 35 All. 72, 17 I. C 465, *Atma Ram* v. *Ugra Sen* (1913) 35 All. 134, 18 I C 697

(c) *Sitaram* v *Dharmasukhram* (1927) 51 Bom. 971, 103 I C 906, (27) A B 487, overruling *Balkrishna* v *Parashram* (1926) 50 Bom 628, 98 I C 629, (26) A.B 479, *Mohammad Ewaz* v *Birj Lall* (1877) 4 I A 166, *Kesho Deo* v *Hari Das* (1899) 21 All 281, *Bissendoyal* v *Schlaepfer* (1874) 22 W. R 68, *Gopeswar* v *Hem Chandra* (1920) 31 Cal. L J. 447, 57 I C. 226.

from him presents the deed for registration after his death, and the registering officer knowing that the executant is dead accepts the deed for registration and registers it the registration is invalid The proper person to present the document for registration in such a case is the ' representative " or " assign of the deceased (*d*) But the registration, it is said, would be valid, if neither the registering officer nor the other party had notice of the death of the deceased This view proceeds on sec 208 of the Indian Contract Act, 1872 by which it is provided that the termination of the authority of an agent does not so far as regards third persons, take effect before it becomes known to them (*e*) We do not think that the provisions of sec 208 have any bearing on the question The provisions of the present section are imperative and if the executant is dead at the date of presentation, the document cannot be presented for registration by one who was once the agent of the deceased **S. 32**

Presumption as to presentation —It is not the law that where a document is registered the party relying on the document should show, before the document is admitted in evidence, that it was presented for registration by a person legally entitled to do so or that the requirements of the Act were otherwise complied with In the absence of evidence to the contrary it must be presumed that the person who presented it was duly authorized in that behalf (*f*) In a case before the Judicial Committee (*g*) a sub registrar to whom a mortgage was presented for registration endorsed upon it a statement that it had been presented on behalf of the mortgagee under a power of attorney duly authenticated Their Lordships held that the endorsement was prima facie evidence that the power of attorney was regular in all respects and in the absence of evidence to the contrary, established the validity of the original presentation Their Lordships said Presentation here was not made in person, it was made under sub section (c) by an agent purporting to be authorized by a power of attorney Such power of attorney must not be general in its form, but must confer the *special* authority to present on behalf of the principal, and even though the sub registrar accepts the presentation under a *general* power of attorney, it is open to any interested party to show that the power of attorney was in fact imperfect The fact that the presentation is accepted by the sub registrar as in proper form is, however prima facie evidence that the conditions have been satisfied, and after such acceptance the burden of proving any alleged informality rests on the person who challenges the registration "

(*d*) *Mujibunnissa* v *Abdul Rahim* (1901) 28 I A 15 23 All 233

(*e*) *Mohendra Nath* v *Kali* (1902) 30 Cal 265 274

(*f*) *Ram Chandra* v *Farmul Ali* (1912) 34 All 253, 13 I C 531, *Elizabeth* v *Bhupendra Nath* (1928) 7 Pat 520, 111 I C 57, (28) A I R 304

(*g*) *Chhotey Lal* v *Collector of Moradabad* (1922) 49 I A 375, 379 44 All 514, 69 I C 44 (22) A PC 279, *Kanhaiylal* v *National Bank of India* (1923) 50 I A 162, 4 Lah. 284, 75 I C 7, (23) A PC 114

Ss. 32, 33

"Representative"—The word "representative" is a term of ambiguous meaning and must be construed according to the context. In ordinary legal use, it denotes the executor or administrator, or sometimes the heir or next of kin. The term "representative" in this section refers to a legal personal representative or (by virtue of sec. 2) the guardian or committee of the person described. But it does not include an agent, for an agent is separately referred to in cl. (c) of the section. Therefore the Privy Council have held that where a security bond is given to the Court pending an appeal, a clerk of the Court is not a "representative" of the judge so as to be qualified by this section to present the bond for registration. Unless the clerk is duly authorized by power of attorney under sec. 33, a presentation so made is invalid (*h*). The father of a minor Hindu girl who is married is not a "representative" of the girl within the meaning of this section, and he is not therefore entitled to present on her behalf a deed of gift executed in her favour by her uncle (*i*). Where the executant of a document dies leaving several heirs any one of them is the "representative" of the executant and may present a document for registration (*j*). See notes to sec. 2 (10), on p. 17 above and notes to sec. 35. "Representative," on p. 152 below.

"Assign"—See notes to sec. 35, "Assign" on p. 153 below.

Production of document for registration.—This section, while it empowers certain persons to present documents for registration, on the assumption that they are in their possession or under their control at the time, imposes no obligation on any one in possession of a document to produce it before the registering officer for registration. Nor is there any other provision in the Act which imposes any such obligation on a party. A party therefore in possession of a document cannot be compelled by suit or otherwise to produce it for registration unless he has expressly undertaken to do so (*k*).

Power of attorney recognizable for purposes of section 32

33. (1) For the purposes of section 32, the following powers of attorney shall alone be recognized, namely:—

(a) if the principal at the time of executing the power-of-attorney resides in any part of British India in

(*h*) *Ma Shwe Mya* v. *Maung Ho Hnaung* (1922) 49 I. A. 395, 50 Cal. 166, 70 I. C. 937, ('22) A. P.C. 359.

(*i*) *Amba* v. *Shrinivasa* (1921) 26 C. W. N. 369, 374, 68 I. C. 754, ('22) A. P.C. 135 [P. C.].

(*j*) *Mathu* v. *Babonsa* (1928) 55 Cal. 1008, 112 I. C. 721, ('28) A. C. 565; *Rafat un Nissa* v. *Husaini Begam* (1925) 47 All. 294, 84 I. C. 786 ('25) A. A. 215; *Gajeshaki Sarkar* v. *Chintabaran Chanda* (1931) 58 Cal. 876, 133 I. C. 191 ('32) A. C. 110; *Abdul Gafur* v. *Bodial Haque* (1932) 55 Cal. L. J. 107, 139 I. C. 234, ('32) A. C. 588.

(*k*) *Hurjivan* v. *Jamsetji* (1884) 9 Bom. 63, 73.

which this Act is for the time being in force, a power of attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides, S 33

(b) if the principal at the time aforesaid resides in any other part of British India, a power-of attorney executed before and authenticated by any Magistrate,

(c) if the principal at the time aforesaid does not reside in British India a power of attorney executed before and authenticated by a Notary Public or any Court, Judge, Magistrate, British Consul or Vice Consul, or representative of His Majesty or of the Government of India

Provided that the following persons shall not be required to attend at any registration office or Court for the purpose of executing any such power-of attorney as is mentioned in clauses (a) and (b) of this section, namely —

(i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend,

(ii) persons who are in jail under civil or criminal process, and

(iii) persons exempt by law from personal appearance in Court

(2) In the case of every such person the Registrar or Sub Registrar or Magistrate, as the case may be, if satisfied that the power of attorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court aforesaid

(3) To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination

(4) Any power of attorney mentioned in this section may be proved by the production of it without further proof

S. 33 when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

Earlier Acts—See sec 33 of Act 3 of 1877 and Act 8 of 1871, sec 35 of Act 20 of 1866, and sec 28 of Act 16 of 1864

Power-of-attorney—The power of attorney must be a special power-of attorney and the sub registrar before authenticating it must satisfy himself of the right of the agent to appear as provided in sec 34 (3) (c) In *Dottie Karan v Lachmi Prasad* (l), a power of attorney was executed before, and authenticated by, the sub registrar of Allahabad on the 9th February 1910 empowering an agent to present for registration a mortgage deed of the 8th February 1910 The date of the deed was altered without the consent of the executants to the 4th October 1910 The power of attorney was then used to present for registration before the sub registrar of Monghyr the mortgage of this altered date It was impossible that a power of the 9th February 1910 could refer to a mortgage of the 4th October 1910 The Privy Council therefore held that the registration of the mortgage was invalid and that the sub registrar had no jurisdiction to accept the mortgage deed for registration. The mortgagee contended that the mortgagor had represented to him that the agent was empowered to present the deed But the Privy Council held that in view of the express provisions of the Act (sec 34 (3) (c)) there was no room for an estoppel

A presentation under a special power-of attorney executed by a minor is valid (m)

See notes to sec 32, ' Presumption as to presentation, " at p 139

Resides—There is no definition of the word 'resides" in this Act, but Explanation I to sec 20 of the Code of Civil Procedure, 1908, would be a very fair explanation of the meaning of the word (n) According to that Explanation, where a person has a permanent dwelling at one place and also a temporary dwelling at another place, he shall be deemed to reside at both places for the purposes of the section

Power-of-attorney executed out of British India—Cl (c) of sub sec (1) refers to "*any* Court, Judge, Magistrate," etc, and presumably covers a power of attorney executed before and authenticated by a *foreign Court Judge or Magistrate, e g, one in a Native State* (o) It would not however cover a power of attorney executed before or

(l) (1931) 58 I A 58, 10 Pat 481, 131 I C 321 (31) A PC 52

(m) *Chhinnammi v Venkayamma* (1933) 64 Mad L J 637, 142 I C 765, (33) A M 407

(n) *Rani Kuber v Har Charan* (1896) All W N 170

(o) *Cf Queen Empress v Nagla Kala* (1898) 22 Bom 235 see also *Ikbal Begam v Sham Sundar* (1882) 4 All 384

authenticated by any other authority than one of those mentioned (p) The Salar Registrar of the Rampur State is not a Court and a power of attorney executed before him was not recognized (q) Ss 33, 34

Proviso to the section—Persons described in the proviso to the section need not execute the power of attorney before the registering officer In the case of such persons all that the registering officer has to do is to satisfy himself that the power-of attorney has been voluntarily executed for which purpose he may go to their houses and examine them (r) The proviso does not apply to a power-of attorney executed outside British India (s)

Enquiry before registration by registering officer

34. (1) Subject to the provisions contained in this Part and in sections 41, 43, 45 69, 75, 77 88 and 89 no document shall be registered under this Act unless the persons executing such document or their representatives assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration fee in addition to the fine, if any, payable under section 25, the document may be registered

(2) Appearances under sub section (1) may be simultaneous or at different times

(3) The registering officer shall thereupon—

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed,

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document, and

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(p) *Cf In the Goods of A T Primrose* (1884) 10 Cal 776

(q) *Ram Mohan Lal v Tasaddaq Husain* (1933) 31 All L J 159 145 I C 572 (33) A A 233

(r) *Bharat Indu v Hamid Ali Khan* (1920) 47 I A 177, 42 All 487, 58 I C 386 (21) A PC 93 [illness of executant], *Chhutan Lal v Shiam Prasad* (1910) 32 All 179, 5 I C 766 [pardanashin lady]

(s) *Ram Mohan Lal v Tasaddaq Husain* (1933) 31 All L J 159 145 I C 572 (33) A A. 233

S 34 (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear

(4) Any application for a direction under the proviso to sub section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate

(5) Nothing in this section applies to copies of decrees or orders

Earlier Acts —See sec 34 of Act 3 of 1877 and Act 8 of 1871 sec 36 of Act 20 of 1866, and sec 29 of Act 16 of 1864

"No document shall be registered'—See notes to sec 35 Registering officer shall refuse to register as to the person denying execution on p 149 below

"The persons executing the document'—The persons described in this section are the persons *executing* the document—not those who on the face of the deed are *parties* to it or by whom it purports to have been executed but those who have actually executed it (*t*)

Where a document is executed by one of two parties on behalf of him self and the other, it is sufficient that the person executing it appears before the registering officer The other party is not required to appear *A* and *B* grant a lease to *C* The lease is executed by *A* on behalf of himself and on behalf of *B* under a power of attorney from *B* *A* appears before the registering officer and admits execution on behalf of himself and *B* This is sufficient under the section There is no provision which requires *B* also to appear before him (*u*) See notes to sec 32, The persons executing the document on p 138 above

A document executed by an agent under a power of attorney can be acknowledged for registration by another agent acting under a power of attorney given for the purpose, the words person executing' in the section do not mean merely person signing but the person who by a valid execution enters into obligation under the document Thus in *Puran Chand* v *Mannoolo Nath* (*v*) *A* gave a power of attorney to *B* to execute a

(*t*) *Mohammed Ewaz* v *Birj Lall* (1877) 4 I A 166 171 1 All 465 470

(*u*) *Bissendoyal* v *Ferdinand* (1874) 22 W R 68 *Kesho Deo* v *Hari Das* (1899) 21 All 281 283 [F B] overruling *Shankar Das* v *Jograj Singh* (1883) 5 All 509, *Gopeswar* v *Hem Chandra* (1920) 31 Cal L J 447 57 I C 226 *Sitaram* v *Dharmasukhram* (1927) 51 Bom. 971 103 I C 906, (27) A B 487

(*v*) (1928) 55 I A 81, 55 Cal 532, 108 I C 342 (28) A PC 38

conveyance on his behalf, and the conveyance was executed by *B*. *A* then S. 34
gave another power of attorney to *C* to appear and admit execution before the registering officer and *C* appeared and admitted execution. It was argued before their Lordships of the Privy Council that only *B*, the person whose hand had signed the conveyance, could appear as one of the persons executing it so as to make the registration valid and that the appearance and admission by *C* or even by *A* himself would not suffice for a valid admission of execution of the conveyance before the registering officer. But this argument was not accepted and it was held that the registration was valid. In the course of the judgment their Lordships said: "By sec. 35 of the Registration Act registration is directed when certain persons have appeared, have been duly identified and have admitted the execution of the document propounded and the necessary persons are 'the persons executing the document'. The appellant contends that in these words 'executing' means and means only 'actually signing'. Their Lordships cannot accept this. A document is executed when those who take benefits and obligations under it have put or have caused to be put their names to it. Personal signature is not required and another person duly authorized may, by writing the name of the party executing, bring about his valid execution, and put him under the obligations involved. Hence the words 'person executing' in the Act cannot be read merely as 'person signing'. They mean something more, namely, the person who by a valid execution enters into obligation under the instrument. When the appearance referred to is for the purpose of admitting the execution already accomplished there is nothing to prevent the executing person appearing either in person or by any authorized and competent attorney in order to make a valid admission. Their Lordships have failed to find in the scheme of the Act anything repugnant to this construction. Any other would involve risk of confusion and might even defeat the statutory procedure by multiplying the persons, who have to be traced and induced to attend, either by themselves or by some representative."

Time for appearance.—This section provides that no document shall be registered unless the persons executing the document appear before the registering officer within the time allowed for presentation of the document. The time allowed under sec. 23 for presenting a document is four months from the date of its execution, and this may be enlarged under sec. 25 so as not to exceed eight months from the date of execution. As regards appearance of parties, as distinguished from presentation of a document, the proviso to the present section provides for a further delay of four months over and above the delay condoned under sec. 25. The result is that while the maximum period for presentation is eight months, that for appearance is twelve months (*w*).

(*w*) *Tullockchand* v. *Gokulbhoy* (1897) 21 Bom. 724, 730.

S. 34 The appearance referred to in this section is not restricted only to the voluntary appearance of the executant, but also includes his appearance under coercive process (*x*), see sec 30

Procedure if delay not condoned.—If a party executing a document does not appear before the registering officer within the prescribed period, he may apply for a direction from the Registrar under the proviso to sub sec (1) to condone the delay The application is to be lodged with the registering officer as provided by sub sec (4), and the latter has then to forward it to the Registrar If the Registrar condones the delay, the registering officer will register the document If the Registrar does not condone the delay, the proper form of the order is to express his opinion that the delay is not due to urgent necessity or unavoidable accident He should then inform the registering officer about his direction, and the latter should then make an endorsement on the document, Registration refused The party aggrieved may then appeal to the Registrar under sec 72 though it amounts in effect to an application to the Registrar to revise his previous decision If the Registrar refuses to direct the registration of the document, he must make an order of refusal under sec 76 (1) (b) The party aggrieved by such order may then bring a suit under sec 77 below (*y*)

No difficulty would arise if the above procedure were followed But it is not strictly followed in all cases and the question then arises whether the order of the Registrar is one under sec 76 so as to entitle the aggrieved party to bring a suit under sec 77 In a Bombay case (*z*), the Registrar, on the appeal of a party under sec 72, instead of making an order *refusing registration* made an order *refusing to revise his decision* It was held that the order was in effect one under sec 76 (1) (b) and that a suit would lie under sec 77 In a Madras case (*a*), the Registrar on the application of a party under sec 34 to condone the delay made an order 'Registration refused' instead of making an order expressing his opinion about the delay The Sub Registrar did not follow up the order of the Registrar by making an order 'Registration refused," nor was any appeal made to the Registrar under sec 72 In a suit instituted by the party under sec 77 it was held *that the suit was maintainable, the reason given for the decision being that* the order of the Registrar fell under sec 76 (1) (a) which was wide enough to cover all orders of the Registrar refusing registration whether such orders were passed on documents presented to him in the first instance or otherwise.

(*x*) *Hassan Ali* v *Ekandram* (1895) 5 Mad L J 29

(*y*) *Fatteeland* v *Unaji* (1923) 47 Bom 290 72 I C 118 (23) A B 187, *Cingaliri* v *Sambasiva* (1916) 40 Mad. 759, 40 I C 192, *Manikka* v *Md Zinuddin* (1925) 48 Mad L J 221, 86 I C 797 (25) A M 619

(*z*) *Fatteeland* v *Unaji* (1923) 47 Bom 290 72 I C 118 (23) A B 187

(*a*) *Manikka* v *Md Zinuddin* (1925) 48 Mad L J 221, 86 I C 797, (25) A M 619

35. (1) (a) If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document, or S. 35

Procedure on admission and denial of execution respectively

(b) if in the case of any person appearing by a representative, assign or agent, such representative, assign or agent admits the execution, or

(c) if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution,

the registering officer shall register the document as *directed in sections 58 to 61, inclusive*

(2) The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office

(3) (a) if any person by whom the document purports to be executed denies its execution, or

(b) if any such person appears to the registering officer to be a minor, an idiot or a lunatic, or

(c) if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

the registering officer shall refuse to register the document as to the person so denying, appearing or dead

Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII:

Provided further that the Local Government may, by notification in the local official Gazette, declare that any Sub-Registrar named in the notification shall, in respect of documents the execution of which is denied, be deemed to be a Registrar for the purposes of this sub-section and of Part XII.

S. 35

Earlier Acts.—See sec 35 of Act 3 of 1877 and Act 8 of 1871, sec 36 of Act 20 of 1866, and sec 29 of Act 16 of 1864

"The persons executing the document"—See notes under sec 32 "The persons executing the document," on p 138 above, and notes under sec 34 under the same heading on p 144 above

Limits of sub-registrar's powers under this section—The Act gives little discretion to the sub registrar He is bound either to register or not to register when he is satisfied by the admission or denial of the parties that the deed has been executed, and no discretion is given to him to inquire further into the matter He can only obtain from the parties or their agents the admission or the denial (b) If execution is denied, the aggrieved party may proceed under sec 73 below (c)

Registering officer "shall" register if execution admitted.—If the person executing a document appears and admits execution, it is the duty of the registering officer to register the deed With other matters he is not concerned He has no power to refuse registration on the ground that the document contains recitals affecting third parties who are strangers to the deed (d), or on the ground that the consideration has not been fully paid (e), or on the ground that though the party executing the document admitted execution, he refused to sign on the back of the document as a token of his admission (f) Nor has the registering officer power to refuse registration on the ground that though the party executing the document admitted execution, he did not assent to its being registered (g), or though admitting execution, he set up an agreement of reconveyance (h), or a collateral agreement which would render the document of no legal force (i)

Admission of execution.—If a person alleged to have executed a document appears before the registering officer, and says that his signature

(b) *Mohammed Ewaz v Birj Lall* (1877) 4 I A 166 174 1 All 465, 473

(c) *Chhotey Lal v Collector of Moradabad* (1922) 49 I A 375 378 44 All 514 517 69 I C 44 (22) A PC 279

(d) *Mutukdharee Lal v Shaik Fuzul* (1866) 6 W R Mis 131 *In the matter of Ramchander Biswas* (1871) 16 W R 180

(e) *In the matter of Brindaban* (1868) 1 Beng L R O C 47 *In the matter of the petition of Bish Nath* (1870) 1 All 318, 322 See sec 58 (1) (c)

(f) See sec 58 sub sec (2), which supersedes the decision in *In the petition of T Venkataswami Naik* (1868) 4 Mad. H C 101, *Man Bhari v Naunidh* (1881) 4 All 40 [registration not invalid if no signature at back] See sec 58 (1) (a)

(g) *Magon Mallo v Doola* (1873) 19 W R 198

(h) *Ramaswami Chettiar v Srinivasa Pillai* (1934) 66 Mad. L J 424, 148 I C 94 (34) A M 113

(i) *Paramadan v Vijayasami* (1868) 4 Mad. H C 427

to the document was obtained by coercion (j) or by fraud (k) or that he signed his name to a blank sheet of paper which was subsequently filled in differently from what was agreed upon (l) does the admission of signature amount to an admission of execution? No according to the view taken by the Chief Court of the Punjab in the under mentioned case (m) Yes according to a decision of the High Court of Calcutta (n) In the Calcutta case, the person alleged to have executed a mortgage bond said to the registering officer that he had signed his name to a blank sheet of paper and that though the signature on the bond was his he had not in reality executed the mortgage or been aware of the bond The Court held that this amounted to an admission of execution and that the sub registrar was justified in registering the document This it is submitted is the correct view The party aggrieved may then file a suit for a declaration that his signature was obtained by coercion or fraud If a party states that he does not object to registration provided it is distinctly understood that he makes no admission as to the validity of execution that is an admission of execution, though the right to challenge the validity of the document is reserved (o) S. 35

Registration no proof of execution.—The mere registration of a document does not prevent a party from bringing a suit for a declaration that his signature to the document is a forgery The reason is that mere registration is not in itself proof of its execution (p) *A* sues *B*, a pardanashin lady, on a mortgage bond The bond purports to be executed by *S* under a registered power of attorney purporting to be executed by *B* The registration of the power of attorney does not preclude *B* from contending that she did not sign it (q)

Registering officer shall refuse to register as to the person denying execution—If any person by whom a document purports to be executed denies its execution, the registering officer is bound to refuse to register the document as to him, leaving the interested parties to appeal to the registrar under sec 73 below (r) If in spite of denial of execution,

(j) *Prosunno Coomar* v *Mothoora Nath* (1870) 15 W R 480

(k) *Wazira* v *Muhammadi* (1918) Punj Rec No 37 p 138, 45 I C 161 [protest by an illiterate vendor that he had not in fact sold his land]

(l) *David Yule* v *Ram Khelawan* (1901) 6 Cal W N 329 331

(m) (1918) Punj Rec No 37, p 138, 45 I C 161, *supra*

(n) (1901) 6 Cal W N 329, *supra* See also (1870) 15 W R 487, *supra*

(o) *Ram Sarup* v *Gaya Prasad* (1932) 139 I C 61, (32) A O 178

(p) *Obhoy Churn* v *Shunker* (1869) 12 W R 500, 503, (1870) 15 W R 487 *supra*, *Salimatul Fatima* v *Koylashpoti* (1890) 17 Cal 903

(q) (1890) 17 Cal 903, *supra*

(r) *Chhotey Lal* v *Collector of Moradabad* (1922) 49 I A 375, 378, 44 All 514, 517, 69 I C 44 (22) A PC 271, *Bhagwan* v *Vithoba* (1867) 4 Bom H C A C 140

S. 35

Earlier Acts.—See sec 35 of Act 3 of 1877 and Act 8 of 1871, sec 36 of Act 20 of 1866, and sec 29 of Act 16 of 1864.

"The persons executing the document."—See notes under sec 32, "The persons executing the document," on p 138 above, and notes under sec 34 under the same heading on p 144 above

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Registering officer "shall" register if execution admitted.—If the person executing a document appears and admits execution, it is the duty of the registering officer to register the deed With other matters he is not concerned He has no power to refuse registration on the ground that the document contains recitals affecting third parties who are strangers to the deed (*d*), or on the ground that the consideration has not been fully paid (*e*), or on the ground that though the party executing the document admitted execution, he refused to sign on the back of the document as a token of his admission (*f*) Nor has the registering officer power to refuse registration on the ground that though the party executing the document admitted execution, he did not assent to its being registered (*g*), or though admitting execution, he set up an agreement of reconveyance (*h*), or a collateral agreement which would render the document of no legal force (*i*)

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(*d*) *Mutukdharee Lal* v *Shaik Fuzul* (1886) 6 W R Mis 131 *In the matter of Pamchandar Biswas* (1871) 16 W R 180

(*e*) *In the matter of Brindaban* (1868) 1 Beng L R O C 47, *In the matter of the petition of Bish Nath* (1870) 1 All 318, 322 See sec 58 (1) (c)

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(*i*) *Ramanadan* v *Vyasami* (1868) 4 Mad H C 425

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S. 35 he registers the document, his action is without jurisdiction, and the registration is ineffectual as regards the person denying execution (*s*)

In a Bombay case the executant of a deed of mortgage failed to appear before the sub registrar of Bombay and admit execution, though he was served with a summons as provided by sec 39 The mortgagee thereupon applied to the sub registrar to treat the mortgagor's neglect to attend and admit execution as equivalent to a denial of execution and to "refuse to register the deed under the provisions of this section in order that an application might be made to the registrar under sec 73 for the purpose of establishing his right to have the deed registered The sub registrar thought (though erroneously) that he could not treat the mortgagor s non appearance as a denial of execution and he did not refuse to register' The mortgagee thereupon took out a rule under sec 45 of the Specific Relief Act, 1877 calling on the sub registrar to show cause why he should not be directed to endorse the deed of mortgage with his refusal to register it It was held that the mortgagor s non appearance was equivalent to a denial of execution and the Court made an order directing the registrar to proceed under sec 74 to make the inquiry therein directed (*t*)

Denial of execution—Denial of execution need not be an actual denial If a representative of a deceased executant states to a registering officer that he does not know whether the deceased executed the document or not it amounts to a denial of execution (*u*) Similarly a refusal to admit execution is a denial of execution A wilful refusal or neglect of the executant of a deed to appear in the registration office in obedience to a summons for enforcing his attendance is a refusal to admit, and therefore a denial (*v*)

Where some admit and some deny execution—The words ' as to the person so denying appearing or dead, at the end of sub sec (3), were inserted in the section by sec 101 of Act 12 of 1879 Before the amendment the question arose whether if a document was executed by two or more persons and some admitted execution and others denied it the registering officer should refuse to register the document as to all, or as to those only who denied execution Their Lordships of the Privy Council held that the document should be registered as to the persons admitting

(*s*) *Ra i un nissa* v *Sabir* (1904) 26 All 57 60

(*t*) *In re Shaik Abdul A i* (1887) 11 Bom 691 696

(*u*) (1887) 11 Bom 691, 696 697, *supra*

(*v*) *Ra lhal sen* v *Chooneelall* (1880) 5 Cal 445, (1887) 11 Bom. 691 cited with approval in *Chhotey Lal* v *Collector of Moradabad* (1922) 49 I A 475 478, 44 All 514 517, 69 I C 44 (22) A I C 279, *Luchhi Narain* v *Satcowrie* (1889) 16 Cal 189, 191 [summons returned unserved as whereabouts not known], *Kifrathi Begum* v *Naj b unnessa* (1898) 25 Cal 93, *Kanhaya Lal* v *Sardar Singh* (1907) 29 All 284 286 287

the execution and that registration should be refused as to the persons denying the execution (w) The amendment gives effect to the Privy Council ruling. The result is that if *A* *B* and *C* execute a deed of sale, and *A* and *B* appear and admit execution but *C* does not the registering officer should register the documents as to *A* and *B*, and refuse registration as to *C* In such a case the registration is effective against *A* and *B* and the deed operates as regards them The deed cannot be treated as wholly unregistered so as to destroy its operation as regards *A* and *B* (x) But it is not admissible against *C* and it cannot affect his interest in the property, the deed not being registered as to him (y) **S. 35**

Whether registration void if made without appearance of any of the executants—It follows from what is stated above that a registering officer should refuse to register a document if the sole executant or, if there be two or more executants all of them do not appear to admit execution before him But suppose the registering officer registers the document, is the registration a nullity in other words is the registration of a deed made without the appearance of any of the persons who executed it null and void ? In *Sah Mukhun Lall* v *Sah Koondun Lall* (z) their Lordships of the Privy Council said It is very doubtful whether the words of that section are not merely directory to the registering officer for the benefit of the parties to the deed and whether his acting without the appearance of the parties and upon evidence, instead of the admission of the parties of the execution of the deed was more than a defect in procedure within the meaning of sec 88 [now sec 87] Now considering that the registration of all conveyances of immoveable property of the value of Rs 100 or upwards is by the Act rendered compulsory and that proper legal advice is not generally accessible to persons taking conveyances of land of small value, it is scarcely reasonable to suppose that it was the intention of the Legislature that every registration of a deed should be null and void by reason of a non compliance with the provisions of sections 19, 21, or 36 [now 34 35], or other similar provisions It is rather to be inferred that the Legislature intended that such errors or defects should be classed under the general words 'defect in procedure in sec 88 of the Act, so that innocent and ignorant persons should not be deprived of their property through any error or inadvertence of a public officer on whom they would naturally place reliance " But later rulings of the Privy Council leave hardly any doubt that the registration in such a case is a nullity. The view taken in recent cases is that the provisions of the present section are not merely directory, but imperative In *Jambu Parshad* v *Muhammad Aftab Ali* (a) their Lordships said " One

(w) *Mohammed Ewaz* v *Birj Lall* (1877) 4 I A 166 1 All 465

(x) (1887) 4 I A. 166, 1 All 465, *supra*

(y) *Ezekiel* v *Annoda* (1922) 50 Cal 160, 70 I C 794, (23) A C 35, *Ammalu Kutti* v *Pamunni* (34) A L 751

(z) (1875) 2 I A. 210, 215, 24 W R 75

(a) (1914) 42 I A 22, 29, 37 All 49, 56, 28 I C 422

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(s) *Jaitun nissa* v *Sabir* (1904) 26 All 57 60

(t) *In re Shaik Abdul Aziz* (1887) 11 Bom 691, 696

(u) (1887) 11 Bom 691, 696 697, *supra*

(v) *Pathakissen* v *Chooneelall* (1880) 5 Cal 445, (1887) 11 Bom 691, cited with approval in *Chhotey Lal* v *Collector of Moradabad* (1922) 49 I.A 475, 478, 44 All 514, 517, 69 I C 44, (22) A PC 279, *Luckhi Narain* v *Salcourie* (1889) 16 Cal 189, 191 [summons returned unserved as whereabouts not known], *Kudrathi Begum* v *Najibunnessa* (1898) 25 Cal. 93, *Kanhaya Lal* v *Sirdar Singh* (1907) 29 All 284, 286 287

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(s) *Ra i un nissa* v *Sabir* (1904) 26 All 57 60

(t) *In re Shaik Abdul La*- (1887) 11 Bom 691, 696

(u) (1887) 11 Bom 691, 696 697, *supra*

(v) *Padhakissen* v *Chooneelall* (1880) 5 Cal 445, (1887) 11 Bom 691, cited with approval in *Chhotey Lal* v *Collector of Moradabad* (1922) 49 I A 475, 478 44 All 514, 517, 69 I C 44, (22) A PC 279, *Luckhi Narain* v *Satcourie* (1889) 16 Cal 189, 191 [summons returned unserved as whereabouts not known], *Kudrathi Begum* v *Najibunnessa* (1898) 25 Cal 93, *Kanhaya Lal* v *Sirdar Singh* (1907) 29 All 284 286 287

or appeared before him but denied execution he could inquire into the fact of execution and if satisfied of the fact of execution register it In the later Acts, however, this power has been taken away **S. 35**

A person who is *entitled* to obtain letters of administration to the estate of a deceased person is his "representative" within the meaning of this section A Hindu executes a deed of gift to his wife Before he could appear to admit execution, he dies leaving his widow the donee as his only heir The widow being entitled to letters of administration to her husband's estate, is his representative and she may appear and admit execution of the deed (*g*) She could also do so as an 'assign' of the deceased (*h*) Where there are two or more representatives that is two or more heirs entitled to letters of administration, and only one of them appears and admits execution it is (if at all) at the most a 'defect in procedure' within the meaning of sec 87 below (*i*) There is however a dictum in an Allahabad case (*j*) that sec 35 (1) (c) requires admission of execution by all the legal representatives of a deceased person In a Bombay case a Hindu died after execution of a deed leaving him surviving two widows and two sons by one of them, both of whom were minors After his death his widow who was childless admitted the execution of the document and it was registered It was held that the registration was valid, as the widow was a representative of her husband for the purpose of registration and that, assuming she was not it was only a defect in procedure which was not sufficient to invalidate the registration (*k*) This case was followed by a Madras Judge who held that if the registering officer accepts an admission of execution by a person, whom he erroneously finds to be the representative of a deceased executant the error is only one of procedure and does not invalidate the registration (*l*) See notes to sec 32, "Representative," on p 140 above

Assign.—See notes under "Representative", on p 152 above

Minority.—The object of this section, which directs the registering officer to refuse to register a document if the person by whom it purports to be executed appears to be a minor, is that if the officer refuses to register on

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(*g*) *Bhabatosh* v *Soleman* (1906) 33 Cal 584 589

(*h*) *Akshoy* v *Manmatha* (1916) 20 Cal W N 1345, 37 I C 362

(*i*) *Pakran* v *Kunhammed* (1900) 23 Mad. 580, *Sujan Bibi* v *Asafa Khatum* (1909) 13 Cal W N 722, 4 I C 69, *Rafat un nissa* v *Husaini Begum* (1925) 47 All 294, 84 I C 786 (25) A A 215, *Madhu* v *Babonsa* (1928) 55 Cal 1008, 112 I C 721, (28) A C 565, *Gayeshali Sarkar* v *Chintobiran Chanda* (1931) 58 Cal 876, 133 I C 191, (32) A C 110

(*j*) *Abdul Aziz Khan* v *Kaniz Fatima* (1933) 31 All L J 318, 145 I C 754, (33) A A 302

(*k*) *Dattatraya* v *Gangabai* (1925) 27 Bom L R 1334, 94 I C 560, (26) A B 137

(*l*) *Arunachala* v *Venkatachala* (1934) 66 Mad. L J 677, 149 I C 1174, ('34) A M 425

S. 35 object of secs 32, 33, 34 and 35 of Act III of 1877 was to make it difficult for persons to commit frauds by means of registration under the Act It is the duty of Courts in India not to allow the imperative provisions of the Act to be defeated when, as in this case, it is proved that an agent who presented a document for registration had not been duly authorized in the manner prescribed by the Act to present it" Similar observations occur in still later cases (*b*) The view taken by the High Court of Allahabad in *Hardei* v *Ram Lal* (*c*), and by the High Court of Madras in *Pakran* v. *Kunhammed* (*d*) that non compliance with the provisions of secs 34 and 35, is a mere ' defect in procedure ' within the meaning of sec 87, can no longer be sustained In fact the decision in *Hardei's* case is entirely inconsistent with the ruling of the Privy Council in *Jambu Parshad's* case cited above

No time limit for registration or for refusing to register.—The Act prescribes a period for *presenting* a document for registration [secs 23, 25] It also prescribes a period for the *appearance* of persons executing the document [sec 34] But there is no period prescribed within which a document which has been admitted for registration may be *registered*, or within which the *order of refusal* by the registering officer to register the document must be made It is a mistake to think that the registration should be completed or that the order of refusal must be made within the period prescribed by sec 34 for the appearance of parties (*e*) At the same time there is no obligation on the part of a registering officer, where an executant does not appear in obedience to a summons, to wait for making his order of refusal until after the expiration of the period prescribed by sec 34 The section says that if any person executing a document denies its execution—and non appearance in obedience to a summons is such a denial—the registering officer *shall* refuse to register the document There is nothing in the section which requires him to wait for eight months before making his order of refusal The proper course for him is to make the order of refusal immediately after the failure of the executant to appear before him on the date specified in the summons (*f*)

Representative.—Under sec 36 of the Registration Act 20 of 1866, which corresponded with the present section, where the executant was dead, and his representative or assign did not appear before the registering officer,

(*b*) *Chootey Lal* v *Collector of Moradabad* (1922) 49 I.A. 375, 378 44 All 514, 517, 69 I C 34 (22) A I C 279, *Bharat Indu* v *Hamid Ali Khan* (1920) 47 I A 177, 182, 42 All 487, 492, 58 I C 386 (21) A PC 93

(*c*) (1889) 11 All. 319, 327

(*d*) (1900) 23 Mad. 580, 582

(*e*) *Luckhi Narain* v *Satcourie* (1889) 16 Cal 189, *Mukhun Lall* v. *Koonlun Lall* (1875) 2 I A 210, 24 W R 75

(*f*) *In re Shaik Abdul Aziz* (1887) 11 Bom 691, 697

PART VII.

Of Enforcing the Appearance of Executants and Witnesses.

Procedure where appearance of executant or witness is desired.

36. If any person presenting any document for registration or claiming under any document which is capable of being so presented desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the Local Government directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorized agent, as in the summons may be mentioned, and at a time named therein S. 36

Local amendments. This section has been amended, in its application to the Presidency of Bombay, by sec 6 of the Indian Registration (Bombay Amendment) Act 5 of 1929, which came into force on the 22nd May 1929 The amendment is as follows —

"In section 36 of the said Act [the Indian Registration Act, 1908] for the words 'may in his discretion' the words 'in his discretion, may, upon receipt of the prescribed fee, issue, or may' shall be substituted, and after the word 'issue' a comma shall be inserted"

Earlier Acts.—See sec 36 of Act 3 of 1877 and Act 8 of 1871, sec 37 of Act 20 of 1866, and sec 31 of Act 16 of 1864

Issue of summons.—Secs 36 and 37 empower the registering officer to issue a summons requiring among others a person executing a document to appear at the registration office If the summons is served upon such person, and he wilfully refuses or neglects to attend and admit execution, it is equivalent to a "denial of execution" within the meaning of sec 35, see notes to sec 35, "Denial of execution," on p 150 above But if the summons is returned unserved, and the registering officer refuses registration, the question arises whether it is to be treated as a case of refusal to register on the ground of denial of execution, or refusal to register on a ground other

S. 35 that ground, the question of minority may at once be brought into a civil Court and there determined (m) See secs 72 and 77 below.

This section provides that if any person appearing before the registering officer *appears* to him to be a minor, he should refuse to register the document as to him If he does not appear to him to be a minor, though in fact he is a minor, the registration is not void Nor is it void even if deception was practised upon the registering officer by the minor and the other party to the document by concealing from him the fact of the minority of the former Such deception, according to the Calcutta High Court, does not amount to ' fraud in the proper sense of the term," so as to invalidate the registration as against the minor (n) See notes to sec 41 below, " Minority of testator '

Registration of instrument of gift after donor's death.—See notes under the same head to sec 17 (1) (a), on p 32 above

Subsequent procedure.—See secs 72 and 76 where registration is refused on a ground other than denial of execution, and secs 73-76 where registration is refused on the ground of denial of execution

Non-appearance of parties and issue of summons.—See notes to sec 36, Issue of summons," on p 155 below

(m) *Chunee Mul* v *Brojo Nath* (1882) 8 Cal 967

(n) *Sham Charan* v *Choudhry Debya Singh* (1894) 21 Cal 872, 881 882

Earlier Acts.—See sec 38 of Act 3 of 1877 and Act 8 of 1871, and sec 39 of Act 20 of 1866 Ss. 38, 39

Persons exempt by law from personal attendance in Court—These are (1) women who according to the custom and manners of the country ought not to be compelled to appear in public, and (2) persons of rank exempt by a notification of the Local Government from personal appearance in Court See secs 132 and 133 of the Code of Civil Procedure 1908

Law as to summonses commissions and witnesses.

39. The law in force for the time being as to summonses commissions and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts shall, save as aforesaid and *mutatis mutandis* apply to any summons or commission issued and any person summoned to appear under the provisions of this Act

Earlier Acts See sec 39 of Act 3 of 1877 and Act 8 of 1871 sec 40 of Act 20 of 1866 and sec 34 of Act 16 of 1864

The law in force See Code of Civil Procedure O XVI (Summoning and attendance of witnesses) and O XXVI rr 1-8 (Commissions to examine witnesses)

Ss. 36-38 than denial of execution Whether it is the former (*o*) or the latter (*p*) depends on the terms of the order made by the registering officer and the reasons given by him for the order If it be the former, the procedure laid down in secs 73 75 should be followed before a suit can be filed under sec 77 , if the latter the procedure laid down in sec 72 should be followed

Optional registration—The provisions of this Part [Part VII] are applicable although the document is one of which registration is optional (*q*)

Whether issue of summons necessary to maintain a suit under sec. 77—It is not necessary that a plaintiff instituting a suit under sec 77 should have applied under sec 36 for the issue of a summons to entitle him to maintain the suit (*r*)

Suit under sec 77.—See notes above

37. The officer of Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required

Officer or Court to issue and cause service of summons

Earlier Acts See sec 37 of Act 3 of 1877 and Act 8 of 1871 , and sec 38 of Act 20 of 1866

38. (1) (a) A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office, or

Persons exempt from appearance at registration office

(b) a person in jail under civil or criminal process, or

(c) persons exempt by law from personal appearance in Court, and who would but for the provision next hereinafter contained be required to appear in person at the registration office,

shall not be required so to appear

(2) In the case of every such person the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination

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(*o*) See *Luckhi Narain v Sitcowrie* (1888) 16 Cal 189 191

(*p*) *Khadim Hussain v Bharat Singh* (1912) 34 All 315 318 319 14 I C 433

(*q*) *Chundra v Debendra* (1894) 1 Cal L J 126 131

(*r*) *Hayat Ali v Muhammad* (1912) 9 All L J 756 16 I C 97

Earlier Acts.—See sec 38 of Act 3 of 1877 and Act 8 of 1871, and sec 39 of Act 20 of 1866

Persons exempt by law from personal attendance in Court.—These are (1) women, who according to the custom and manners of the country ought not to be compelled to appear in public and (2) persons of rank exempt by a notification of the Local Government from personal appearance in Court See secs 132 and 133 of the Code of Civil Procedure, 1908

Law as to summonses, commissions and witnesses.

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The law in force See Code of Civil Procedure O XVI (Summoning and attendance of witnesses) and O XXVI rr 1 8 (Commissions to examine witnesses)

PART VIII.

Of Presenting Wills and Authorities to Adopt.

Ss. 40, 41

Persons entitled to present wills and authorities to adopt

40. (1) The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration.

(2) The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

Earlier Acts.—See sec 40 of Act 3 of 1877 and Act 8 of 1871; sec 44 of Act 20 of 1866, and sec 46 of Act 16 of 1864

Registration of wills and authorities to adopt

41. (1) A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document.

(2) A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied—

(a) that the will or authority was executed by the testator or donor, as the case may be;

(b) that the testator or donor is dead; and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same.

Earlier Acts.—See sec 41 of Act 3 of 1877 and Act 8 of 1871, sec 76 of Act 20 of 1866

Presenting of wills and authorities to adopt.—"Sec 40 is intended for the case of what may be called ambulatory documents, documents which can be revoked at any moment, and which will have no binding effect till the death of the executant, and to that extent they are taken out of sec 32 An intended executor, legatee or donee of a power might possibly under sec 32 be considered as a person claiming under the instrument But he is not to be allowed to present a document for registration while it is still ... of revocation On the other hand, the class of persons who after

death may claim to register is defined, and it may be said expanded It is not merely the executor but also the legatee It is not merely the donee of the power to adopt, but also the person claiming to have been adopted These are the principals Then given the principals sec 32 introduces certain agents who can take the place of principals, and one of these agents is the "representative" of a person claiming under the document (s) **S. 41**

Representative.—Secs 40 and 41 do not exclude the operation of sec 32 (see preceding paragraph) Therefore a will and an authority to adopt can be presented for registration after the death of the testator and the donor of the authority not only by the persons competent to present the same under sec 40, but also by their agents and representatives under sec 32 An authority to adopt was presented for registration by the natural father of a minor for whom no guardian had been appointed Although the minor had been removed by the adoption out of his natural family, yet as he was living with his natural father the Privy Council held that the natural father was his representative, and further that the matter was concluded by the certificate of the registering officer before whom no objection had been raised (*t*)

On the marriage of a minor Hindu girl, her father ceases to be her natural guardian He is not therefore her 'representative' within the meaning of sec 2 (10), and is not entitled to present a will for registration on her behalf (*u*)

When an authority to adopt is contained in a will, but the document has no legal effect as a will, the authority to adopt could not be treated as one conferred by a will, and it would be ineffectual unless it was duly registered under sec 17 (3) of the Act (*v*)

Minority of testator.—A will may be presented for registration by the testator, or, after his death, by any person claiming under it [sec 40] If it is presented for registration by the testator the rules laid down in sec 35 including an enquiry as to the minority of the testator are made applicable by sub sec (1) of the present section But these rules do not apply if the will is presented for registration *after* the death of the testator by a person claiming under it In the latter case the special rules laid down in sub-sec (2) apply, and these do not include an inquiry into the minority of the testator. Where a will therefore is made by a minor, and it is presented for registration after his death by a person claiming under it the registering officer has no

(*s*) *Venkatappayya* v *Venkata Ranga Rao* (1929) 56 I A 21 23 52 Mad. 175, 114 I C 17, (29) A.I C 24

(*t*) (1929) 56 I A 21, 52 Mad. 175, 114 I C 17, (29) A I C 24 *supra*

(*u*) *Narayana* v *Audilakshmi* (1928) 51 Mad. 462, 109 I.C 548, (28) A M. 537

(*v*) *Kondapalli* v *Vanlapala* (1925) 52 I A 305, 48 Mad. 614, 89 I C. 733, (25) A PC 196

PART VIII.

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Persons entitled to present wills and authorities to adopt

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(a) that the will or authority was executed by the testator or donor, as the case may be,

(b) that the testator or donor is dead, and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same.

Earlier Acts—See sec 41 of Act 3 of 1877 and Act 8 of 1871, sec 76 of Act 20 of 1866

Presenting of wills and authorities to adopt.—"Sec 40 is intended for the case of what may be called ambulatory documents, documents which can be revoked at any moment, and which will have no binding effect till the death of the executant, and to that extent they are taken out of sec 32 An intended executor, legatee or donee of a power might possibly under sec 32 be considered as a person claiming under the instrument But he is not to be allowed to present a document for registration while it is still capable of revocation On the other hand, the class of persons who after

death may claim to register is defined and it may be said expanded It is not merely the executor but also the legatee It is not merely the donee of the power to adopt but also the person claiming to have been adopted These are the principals Then given the principals sec 32 introduces certain agents who can take the place of principals and one of these agents is the 'representative' of a person claiming under the document (s) S. 41

Representative.—Secs 40 and 41 do not exclude the operation of sec 32 (see preceding paragraph) Therefore a will and an authority to adopt can be presented for registration after the death of the testator and the donor of the authority not only by the persons competent to present the same under sec 40 but also by their agents and representatives under sec 32 An authority to adopt was presented for registration by the natural father of a minor for whom no guardian had been appointed Although the minor had been removed by the adoption out of his natural family yet as he was living with his natural father the Privy Council held that the natural father was his representative and further that the matter was concluded by the certificate of the registering officer before whom no objection had been raised (t)

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Minority of testator.—A will may be presented for registration by the testator, or, after his death by any person claiming under it [sec 40] If it is presented for registration by the testator, the rules laid down in sec 35 including an enquiry as to the minority of the testator are made applicable by sub sec (1) of the present section But these rules do not apply if the will is presented for registration *after* the death of the testator by a person claiming under it In the latter case the special rules laid down in sub sec (2) apply, and these do not include an inquiry into the minority of the testator Where a will therefore is made by a minor and it is presented for registration after his death by a person claiming under it, the registering officer has no

(s) *Venkatappayya* v *Venkata Ranga Rau* (1929) 56 I A 21 28 52 Mad. 175 114 I C 17 (29) A PC 24

(t) (1929) 56 I A. 21, 52 Mad. 175 114 I C 17, (29) A PC 24 *supra*

(u) *Narayana* v *Audilakshmi* (1928) 51 Mad 462, 109 I C 548, (28) A M. 557

(v) *Kondapalli* v *Mandapala* (1925) 52 I A 305 48 Mad. 614 89 I C 733 (25) A PC 196

PART VIII.

Of Presenting Wills and Authorities to Adopt.

Persons entitled to present wills and authorities to adopt

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(2) The donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub Registrar for registration.

Earlier Acts —See sec 40 of Act 3 of 1877 and Act 8 of 1871, sec 44 of Act 20 of 1866 and sec 46 of Act 16 of 1864

Registration of wills and authorities to adopt

41. (1) A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document

(2) A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied—

(a) that the will or authority was executed by the testator or donor, as the case may be,

(b) that the testator or donor is dead, and

(c) that the person presenting the will or authority is, under section 40, entitled to present the same

Earlier Acts —See sec 41 of Act 3 of 1877 and Act 8 of 1871, sec 76 of Act 20 of 1866

Presenting of wills and authorities to adopt — 'Sec 40 is intended for the case of what may be called ambulatory documents documents which can be revoked at any moment, and which will have no binding effect till the death of the executant and to that extent they are taken out of sec 32 An intended executor legatee or donee of a power might possibly under sec 32 be considered as a person claiming under the instrument But he is not to be allowed to present a document for registration while it is still capable of revocation On the other hand, the class of persons who after

PART IX.

Of the Deposit of Wills.

Ss. 42-44

Deposit of wills

42. Any testator may, either personally or by duly authorized agent, deposit with any Registrar his will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document

Earlier Acts —See sec 42 of Act 3 of 1877 and Act 8 of 1871 sec 41 of Act 20 of 1866 and sec 46 of Act 16 of 1864

Procedure on deposit of wills

43. (1) On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day and hour of such presentation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover

(2) The Registrar shall then place and retain the sealed cover in his fire proof box

Earlier Acts —See sec 43 of Act 3 of 1877 and Act 8 of 1871, sec 77 of Act 20 of 1866, and sec 47 of Act 16 of 1864

Withdrawal of sealed cover deposited under section 42

44. If the testator who has deposited such cover wishes to withdraw it, he may apply, either personally or by duly authorized agent, to the Registrar, who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly

Earlier Acts —See sec 44 of Act 3 of 1877 and Act 8 of 1871, sec 45 of Act 20 of 1866, and sec 48 of Act 16 of 1864

Ss. 45, 46

Proceedings on death of depositor

45. (1) If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No 3

(2) When such copy has been made, the Registrar shall re-deposit the original will

Earlier Act —See sec 45 of Act 3 of 1877 and Act 8 of 1871, sec 46 of Act 20 of 1866, and sec 49 of Act 16 of 1864

Application to be made.—The applicant need not be a claimant or executor under the will, and may be anyone who is prepared to pay the requisite copying and other fees

Saving of certain enactments and powers of Courts

46. (1) Nothing hereinbefore contained shall affect the provisions of section 259 of the Indian Succession Act, 1865, or of section 81 of the Probate and Administration Act, 1881, or the power of any Court by order to compel the production of any will

(2) When any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

Earlier Acts.—See sec 46 of Act 3 of 1877 and Act 8 of 1871

Sec 259 of the Indian Succession Act, 1865.—This is now sec 294 of the Indian Succession Act, 1925

" Sec 81 of the Probate and Administration Act, 1881 "—This is also now sec 294 of the Indian Succession Act, 1925

Power of Court to compel production of will.—This section saves the power of the Court to compel the production of a will There was no section in the Registration Acts of 1864 and 1866 corresponding to the present section Even in the absence of this provision in those Acts it was [illegible]

. . . . . .

Oudh Estates Act I of 1869.—The deposit of a will under this Part of the Act does not amount to the registration required by sec 13 of Act 1 of 1869 (a)

(z) *In the goods of Nagindas* (1867) 3 Bom. H C O C 135.

(a) *Abdul [illegible] v [illegible] Haidar* (1884) 10 I A 121 10 Cal 976

PART X.

Of the Effects of Registration and Non-Registration.

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration S. 47

Time from which registered document operates

Earlier Acts—See sec 47 of Act 3 of 1877, Act 8 of 1871 and Act 20 of 1866 and sec 67 of Act 8 of 1864

Competition between two registered documents—Where there is a competition between two documents (relating to the same property) *both* of which are registered, the question of priority as between them is to be determined with reference to the provisions of this section, and sec 50 has no application (*b*)

Registered document operates from the date of execution—Under Acts 1 and 19 of 1843 a registered document operated from the date of registration and not from the date of its execution Under the Acts of 1864, 1866, 1871 1877 and the present Act a registered document operates from the date of its execution, and not from the date of its registration (*c*) The result is that if two registered documents are executed by the same person in respect of the same property to two different persons at different times, the one which was executed first has now priority over the other, although the former was registered subsequently to the latter, in other words, registration of a document relates back to the date of its execution *A* executes a deed of sale of his property to *B* Subsequently he executes another deed of sale of the same property to *C* The deed to *B* is not registered until after the deed to *C* This does not disentitle *B* to priority over *C* (*d*) Let us take another illustration

(*b*) *Abdullah* v *Bhiclul* (1934) 147 I C 767, (34) A P 68

(*c*) *Lakshmandas* v *Dasrat* (1882) 6 Bom 168 *Mohammad Bashir Khan* v *Kulsam Bibi* (1927) 25 All L J 742, 103 I C 308, (27) A.A. 545

(*d*) *Motichand* v *Sagun* (1904) 29 Bom 46, *Mathura* v *Ambika* (1914) 12 All L J 993 25 I C 725 *Mahomed Chutan* v *Reuonal* (1931) 124 I C 371, (31) A S 74, *Jowand Singh* v *Sawan Singh* (33) A L 836, *Ram Narain Chaube* v *Basdeo Misra* (1934) 32 All L J 1200, 146 I C 159, (34) A A 70

S. 47 [illegible] by A to B

[illegible] 1903—lease of the same property by A to C

[illegible] 1903—mortgage of the same property by A to C

[illegible] C are registered before the deed to B B sues for [illegible] B is entitled to possession though his deed [illegible] to the two deeds to C (e) If the prior deed is [illegible] the time allowed by the Act it will not be postponed [illegible] to a subsequent deed registered at an earlier date (f)

This section does not affect the rule of Hindu or Mahomedan law as to possession.—It follows from the provisions of this section that [illegible] between registered documents relating to the same [illegible] executed first in order of time has priority over the [illegible] the former document may not have been registered until after [illegible] But the section does not affect the rule of Mahomedan or Hindu law as to the necessity for delivery of possession to complete a transfer Thus under the Mahomedan law delivery of possession is essential to complete a gift If therefore A executes a deed of gift of his property to B, but the gift is not accompanied by delivery of possession and A subsequently executes a deed of gift of the same property to C and the gift is accompanied by delivery of possession [illegible] both the deeds are registered B is not entitled to the property though the deed to B may be executed and registered before the deed to C The reason is that B's title to the property was never completed no possession having been delivered to him The person entitled to the property is C Under the Hindu law also delivery of possession was necessary to complete a gift but that rule has been superseded by the provisions of sec 123 of the Transfer of Property Act As regards sales and mortgages also it was at one time held by the High Court of Bombay (g) in cases before the Transfer of Property Act 1882, that under the Hindu law possession was necessary to complete the transferee's title but those decisions are no longer law since the ruling of the Privy Council in the under mentioned case (h) This subject need not be pursued further, for we are not concerned here with what the rule of Hindu or Mahomedan law is All that we have to note is that the present section does not alter or qualify any rule under that law

(e) *Narayan* v *Laxman* (1903) [illegible] Bom. 4[illegible] *Lall* [illegible] v *Amrit* (1877) 2 Bom [illegible] 343 [illegible] *Narayan* (1883) 8 Bom 18[illegible] 184

(f) *Surendranath* [illegible] v *Hira* [illegible] *P* [illegible] (1933) [illegible] Cal 2[illegible] 144 [illegible] 1933 [illegible] 318

(g) *Lalubha* [illegible] v *Amrit* (1877) 2 Bom [illegible] *Haku* [illegible] (188[illegible]) [illegible] Bom [illegible] *Narayan* (1883) 8 Bom 18[illegible] *Pat Suraj* [illegible] *Dalpatram* (1887) 6 Bom 38[illegible]

(h) *Kali Das* v *Kanhya Lal* (1886) 11 I A 218 See *Narayan* v *Laxman* (1904) 29 Bom 4[illegible] 44-45 *Lgirchand* [illegible] *Mahipa* (188[illegible]) 9 Bom [illegible] *Pajani Nath* v *Of* [illegible] (1911) 22 Cal. W N 318 [illegible] I C. 81[illegible]

Registration as passing title.—Where an instrument which purports to transfer title to property requires to be registered, the title does not pass until registration has been effected (i) At the same time it cannot be laid down as a general rule that mere registration of an instrument *without reference to other circumstances* operates to transfer the property (j) See notes to sec 50, "Failure of consideration" **S. 47**

Registration and fraudulent preference—Under sec 54 of the Provincial Insolvency Act, 1920, a transfer of property made by a person unable to pay his debts in favour of a creditor with a view to giving that creditor preference over other creditors is deemed to be fraudulent and void against the receiver, if the debtor is adjudged insolvent on a petition presented within three months of the date of the transfer This has been construed to mean three months of the date of registration of the transfer lest the section should be evaded by delay in registration (k)

"Registered."—The expression "registered" in this section means validly registered (l)

"Registered" used with reference to a document shall mean registered in British India under the law for the time being in force for the registration of documents General Clauses Act 10 of 1897, sec 3 (15)

Adoption by donor before registration.—A Hindu executed a deed of gift of part of his immoveable property and delivered it to the donee On the following day he adopted a son Three days later he registered the deed. It was held by the Privy Council that the gift was valid against the adopted son On delivery of the deed to the donee there was an acceptance of the transfer within sec 122 of the Transfer of Property Act, 1882, and thereupon the gift became effectual subject to its registration as required by sec 123 of the Act (m)

Where a duly executed and attested deed of gift of immoveable property has been handed by the donor to the donee and has been accepted by the latter, the donor cannot revoke the gift although at the date of the purported revocation the deed is not registered (n)

(i) *Papireddi v Narasareddi* (1893) 16 Mad 464, *Sheonarain v Durbari* (1898) 2 Cal W N 207, *Tilakdhari Singh v Gour Narain* (1920) 5 Pat L J 715 59 I C 290, (21) A P 150

(j) *Ramalinga v Ayyadora* (1905) 28 Mad 124, 126, *Singa v Cumarasami* (1895) 18 Mad C1

(k) *U Ba Sein v Maung Sin* (1934) 12 Rang 263 151 I C 670 (34) A. R. 216, *Iswarayya v Subbanna* (1934) 67 Mad L J 350

(l) *Bhagat Singh v Ram Narain* (1883) Punj Rec No 93

(m) *Kalyanasundaram v Karuppa* (1927) 54 I A 89, 50 Mad. 192, 100 I C 105 (27) A I C 42, *Atmaram v Vaman* (1924) 49 Bom 388, 87 I C 490 (25) A B 210

(n) *Venkatsubba v Subba Rama* (1928) 52 Bom 313, 108 I C. 367, (28) A PC 86

S. 48

Registered documents relating to property when to take effect against oral agreements

48. All non-testamentary documents duly registered under this Act, and relating to any property, whether moveable or immoveable, shall take effect against any oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession *and the same constitutes a valid transfer under any law for the time being in force:*

Provided that a mortgage by deposit of title deeds as defined in section 58 *of the Transfer of Property Act,* 1882, *shall take effect against any mortgage deed subsequently executed and registered which relates to the same property*

Earlier Acts—This section corresponds with sec 48 of Act 3 of 1877 and Act 8 of 1871 There was no corresponding provision in Act 16 of 1864 Sec 48 of Act 20 of 1866 was in these terms ' All instruments duly registered under this Act and relating to any moveable or immoveable property, shall take effect against any oral agreement or declaration relating to the same property As to that section it was held that it had no retrospective effect and that an oral charge on immoveable property created by deposit of title deeds, which would have ranked prior to a subsequent registered mortgage before the passing of the Act, did not lose priority by virtue of the provisions of that section (o)

Amendment of the section.—The words in italics in the section have been inserted by sec 10 (2) of the Transfer of Property (Amendment) Supplementary Act, 1929 See notes ' Oral agreement accompanied by delivery of possession below, and notes ' Equitable mortgage by deposit of title-deeds on p 167 below

The words unless where the agreement or declaration has been accompanied or followed by delivery of possession were first added by Act 8 of 1871

Oral agreement accompanied by delivery of possession—Comparing the present section, which corresponds with sec 48 of the Registration Act 3 of 1877 and of Act 8 of 1871, with sec 48 of the Registration Act 20 of 1866 [see notes above, ' Unrepealed Acts'] it will be observed that sec 48 of the Act of 1866 ended with the words ' relating to such property ' That section did not contain any provision in favour of oral agreements accompanied or followed by delivery of possession Hence the question arose under that section whether if the oral agreement was

(o) *Jivandas v. Framji* (1870) 7 Bom H C O C 47

S. 48

accompanied or followed by delivery of possession the subsequent registered document could take effect against such agreement It was held in some cases that the subsequent registered document took effect against the prior oral agreement even if the agreement was accompanied by delivery of possession In other cases it was held that where possession was given under the oral agreement the registered document did not take effect against the oral agreement The words "unless where the agreement or declaration has been accompanied or followed by delivery of possession" first added to the section by Act 8 of 1871 gave effect to the latter decisions

The words "accompanied or followed by delivery of possession" were construed to limit the application of the section to cases where the agreement operated as a transfer by delivery of possession as where the property was of value not exceeding Rs 100 Thus in a Madras case (p) Muttusami Ayyar, J, said "Section 48 in protecting oral agreements accompanied with or followed by delivery of possession against the rule of priority contemplates oral alienations referred to in paragraph 3 of section 54 of the Transfer of Property Act 4 of 1882 and has the effect of treating delivery of possession as equivalent to registration" Again in a Calcutta case (q) Pontifex, J, said that, "the words relating to possession which are found in sec 48 were inserted for the purpose of limiting the operation of oral alienations" But it was also recognized that even where the transaction did not effect a transfer by delivery of possession, yet there were equities in favour of a person in possession under an oral agreement of sale of property of value exceeding Rs 100 which gave him priority (r)

These equities have now been embodied in sec 53A of the Transfer of Property Act and the amending Act 21 of 1929 therefore added the words "and the same constitutes a valid transfer under any law for the time being in force" which have the effect of limiting the section to actual transfers, while agreements which do not operate as transfers are outside the scope of the section and are governed by sec 53A of the Transfer of Property Act, 1882

Equitable mortgage by deposit of title-deeds.—As the effect of the addition of the words "and the same constitutes a valid transfer under any law for the time being in force" is to limit the scope of the section to oral alienations effected by delivery of possession, it might be supposed that an equitable mortgage was deprived of priority The case of an equitable mortgage is therefore made an exception to show that, although not accompanied by delivery of possession an equitable mortgage has priority over

(p) *[illegible] v. Krishnan* (1890) 13 Mad 324 330

(q) *Fuzladeen Khan v. Fakir Mahomed* (1880) 5 Cal 336 346 347

(r) *Chandranath Roy v. Bhojrub Chunder* (1884) 10 Cal 250 *Palani v. Selambaram* (1886) 9 Mad 267, *Kanan v. Krishnan* (1900) [illegible] 374 *Chunder Kant v.* (1884) 10 Cal 710

48 a subsequent registered instrument This does not of course effect any change in the law for an equitable mortgage is a complete act and not an executory agreement *A* deposits the title-deeds of his property with *B* to secure payment of a loan made to him by *B* *A* then executes a legal mortgage of the same property to *C* The mortgage deed to *C* is duly registered *C* is not entitled to priority over *B* (*s*) The question whether *C* had notice or not when he took his mortgage, of the equitable mortgage to *B* is entirely immaterial in such a case (*t*)

Notice of oral agreement not accompanied by possession has the same effect as possession—It remains to consider whether, if an agreement is not accompanied or followed by delivery of possession but the holder of the subsequent registered document had notice when he entered into the transaction of the prior oral agreement the oral agreement takes precedence of the registered document as it would have done if it had been accompanied or followed by delivery of possession or whether the registered document takes effect against the oral agreement It has been held, notwithstanding the apparent stringency of the words of this section that if the holder of the subsequent registered document had notice when he took his transfer of the prior agreement registration would not give him priority over the earlier agreement In *Waman* v *Dhondiba* (*u*) which is the leading case on the subject Westropp C J, said The reason for the exception made by it [sec 48] in favour of an oral agreement accompanied by possession is, that by such possession the parties who rely on a subsequent registered deed had or might if they had been reasonably vigilant have had previously to entering into their contract with the vendor and to their taking a conveyance, notice by the fact of such possession that there was some prior claim to the property Therefore where there is actual notice of a prior oral agreement, although unaccompanied by possession the object of the Legislature is fully attained The principle of the decision in *Waman's* case has been followed by other High Courts (*v*)

The doctrine of notice referred to above applies with still greater force to cases governed by the Specific Relief Act I of 1877 It is provided by cl (b)

(*s*) *Coggan* v *Pogose* (1884) 11 Cal 158 160, *Chhotalal Das* v *Eastern Mortgage and Agency Co* (1906) 33 Cal 410 421 422 *Stewart* v *Bank of Upper India Ltd* [illegible] (1910) Punj Rec No 31 p 8 [illegible] 7 I C 937 See also *Jivandas* v *Framji* (1870) 7 Bom H C O C 45 at p 49 *et seq* See also the definition of a tenure [illegible] as given by Markby J in *Sital* v *Dinanath* (18[illegible]) 12 W R 217 219

(*t*) (1906) 33 Cal 410 421 422 *supra*

(*u*) (1880) 4 Bom 152 [sale]

(*v*) *Sonai Charan* v *Kolai Fog* (1881) 6 Cal 331 [lease] *Chunder Nath* v *Bhojoy Chunder* (1884) 10 Cal 250 [sale] *Thimmayana* v *Abdulla Sahib* (1907) 17 Mad L J 310 [sale] *Lalla Prasad* v *Braj Das* (1913) 11 All L J 137 18 I C 733 [sale] *Ulfat Khan* v *Malik* (1910) Punj Rec No 6 2 I C 100 [sale] *Jalal Jan* v *Rahmat Nur* (1910) Punj Rec No 132 p 344 at p 348 2 I C 21 [gift]

of sec 27 of that Act that specific performance of a contract may be enforced not only against either party thereto but any other person claiming under him by a title arising subsequently to the contract except a transferee for value who has paid his money in good faith and without notice of the original contract This shows that where a person *has notice of a prior contract* he cannot by any transfer that he may subsequently obtain override the prior contract It is immaterial that his transfer is registered for the words used are "transferee for value" and a transfer for value can be made only by a registered instrument when the value exceeds Rs 100 (w) In a case to which the Specific Relief Act did not apply (x) Mitter J said with reference to sec 27 of the Act "If the case were governed by the Specific Relief Act, we should have no hesitation in saying that sec 27 would apply to this case But although that Act is not in force in the district of Manbhoom we may fall back upon the general rules of equity [as to notice], which are, undoubtedly in the plaintiff's favour It appears to us that if we adopt the principle that no equity [that is equity arising from *notice*] is to be considered where an oral agreement to alienate is not followed by possession the 27th section of the Specific Relief Act as illustrated would be rendered a dead letter wherever it applies when competition arises between an oral agreement to alienate unaccompanied by possession and an alienation by registered deed *with notice of the previous agreement* but we are not compelled to adopt this conclusion It is instructive to compare the observations of Westropp C J in *Haman* v *Dhondiba* cited above with the second and third illustrations to cl (b) of sec 27 of the Specific Relief Act The second illustration runs thus *A* contracts to sell certain land to *B* for Rs 5 000 *A* afterwards conveys the land for Rs 6 000 to *C*, who *has notice of the original contract* *B* may enforce specific performance of the contract as against *C* The third illustration is as follows *A* contracts to sell land to *B* for Rs 5 000 *B* takes possession of the land Afterwards *A* sells it to *C* for Rs 6 000 *C* makes no inquiry of *B* relating to his interest in the land *B's possession is sufficient to affect C with notice of his interest* and he may enforce specific performance of the contract against *C* S. 48

Under sec 100 of the Transfer of Property Act 1882, as amended by Act 20 of 1929 a mortgage has priority over a previous charge of which the mortgagee had not notice (y)

"Declaration"—In a Bengal case (z) Markby, J, dealing with sec 48 of Act 20 of 1866 said "Next what is the proper sense to be attributed

(w) *Chunder Kant* v *Krishna* (1884) 10 Cal 710 712 *Kamatchi* v *Krishnan* (1890) 13 Mad 324 329 330

(x) *Nemai Charan* v *Kokil Bag* (1881) 6 Cal 534 537 538

(y) *Chhaganlal* v *Chunilal* (1934) 36 Bom L R 277 ('34) A B 189

(z) *Sal n* v *Bodonath* (1869) 12 W R 217, 219

Ss. 48, 49

to the words 'declaration or agreement' in section 48? With regard to the first of these words, I imagine that by a *declaration* as distinguished from an *agreement* is meant a declaration of his wishes by the owner with reference to his property not amounting to a contract, and which the maker is at liberty to re call whereas by an agreement' is meant something which if correct in point of form, is binding on the maker '

Accompanied or followed by delivery of possession—Delivery of possession, whether it accompanies or follows the oral agreement must it is submitted be made *before the date* of the subsequent registered document

Does not apply. This section applies only if there is a competition between an oral agreement on the one hand and a subsequent registered document on the other It does not apply if the subsequent document is *unregistered* Cases in which there is a conflict between an oral agreement and a subsequent unregistered document are to be dealt with apart from the provisions of this section (*a*) Nor does the section apply where a mortgagee under an oral agreement of mortgage, not accompanied by delivery of possession has obtained a preliminary decree for sale, and the property is sold by the mortgagor by a registered deed after the decree and before the expiry of the period fixed for redemption If the mortgagee sells the property under the decree the purchaser at the court sale is entitled to priority over the purchaser from the mortgagor (*b*)

Reference by Board of Revenue—The Board of Revenue has no power to make a reference to the High Court whether a particular document requires to be registered (*c*) It is surprising that the point should ever have arisen for decision

Effect of non registration of documents required to be registered

49. No document required by section 17 *or by any provision of the Transfer of Property Act*, 1882, to be registered shall—

(a) affect any immoveable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered

(*a*) See [illegible] v. *Bank of Upper India Ltd* (1916) Punj Rec No. 3[illegible] 34 I C 932

(*b*) Cf *Jaikan* v. *Gopal* (1880) Punj Rec No. 115

(*c*) *Samsarnjan* v. *Mata [illegible]* (1916) 38 All 371 383 34 I C 280

Provided that an unregistered document affecting immoveable property and required by this Act or the Transfer of Property Act 1882 to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act 1877 or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act 1882 or as evidence of any collateral transaction not required to be effected by registered instrument **S. 49**

Amendment of the section—This section has been amended by sec 10 of the Transfer of Property (Amendment) Supplementary Act, 1929 The italics show the alterations in the section The amendment in the first paragraph settles a doubt as to whether the section applies not only to documents compulsorily registrable under sec 17 of the Registration Act but also to documents of which registration is required by the Transfer of Property Act (*d*) The amending Act came into force on the 1st April 1930 and it has been held that it is not retrospective (*e*)

Earlier Acts—See sec 49 of Act 3 of 1877, Act 8 of 1871 and Act 20 of 1866, and sec 13 of Act 16 of 1864

The corresponding sec 13 of Act 16 of 1864 ran as follows —

" No instrument [required to be registered under Act 16 of 1864] *shall be received in evidence in any civil proceeding in any Court, or shall be acted on by any public officer* unless the same shall have been registered in the manner and within the time prescribed by this Act

Sec 49 of Act 20 of 1866 ran as follows —

No instrument required by section 17 to be registered *shall be received in evidence in any civil proceeding in any Court, or shall be acted on by any Public Servant* as defined in the Indian Penal Code, *or shall affect any property comprised therein* unless it shall have been registered in accordance with the provisions of this Act

" No document "—The section says that no document required to be registered shall affect any immoveable property comprised therein unless it has been registered The section therefore does not apply unless the terms of a transaction have been reduced to the form of a document (*f*)

(*d*) *Daud v Dharma* (1917) 41 Bom 550 41 I C 273 *Rani v Corro* (1921) 44 Mad 55 65 I C 350 (21) A M 337 *Sobha Lal v Mohan Lal* (1928) 50 All 986 (28) A A 726

(*e*) *Kanjee Mooljee Bros v Shanmugam Pillai* (1933) 56 Mad 167 139 I C 870 (32) A M 734 *Kedar Nath v Dongar Mal* (1931) 134 I C 289 (31) A L 501 *Dharichand v Malabir* (33) A P 514

(*f*) *Narsu v Purshottam* (1928) 52 Bom 875 (28) A B

S. 49 **By any provision of the Transfer of Property Act, 1882.**—These words were inserted by the amending Act, 21 of 1929 and settle a doubt as to whether documents of which the registration was compulsory under the Transfer of Property Act but not under sec 17 of the Registration Act were affected by sec 49 of the Registration Act Sec 4 of the Transfer of Property Act enacts that ' section 54, paragraphs 2 and 3 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908 " It was supposed that the effect of this section was merely to add to the list of documents of which the registration was compulsory and not to include them in sec 17 so as to bring them within the scope of sec 49 This was the view taken by a Full Bench of the Allahabad High Court (*g*), by MacLeod, C J, in a Bombay case (*h*) and by a majority of the judges in a Madras Full Bench case (*i*) These cases are referred to and criticized in the note "Supplemental" to sec 4 of Mulla's Transfer of Property Act The documents relating to immoveable property of which registration is compulsory under the Transfer of Property Act but not under the Registration Act are sales and mortgages of value not exceeding Rs 100 and leases other than leases from year to year or for any term not exceeding one year or reserving a yearly rent Such documents now fall within the scope of sec 49 and if not registered do not affect the immoveable property comprised therein and are not receivable as evidence of any transaction affecting the property

"**Unless it has been registered.**"—The corresponding section of the Registration Acts of 1886, 1871 and 1877, contained the words "in accordance with the provisions of this Act" after the word "registered" Those words have been omitted in the present section in view of the definition of the term ' registered " contained in the General Clauses Act 10 of 1897, sec 3 (45) That definition is in these terms "'registered,' used with reference to a document, shall mean registered in British India under the law for the time being in force for the registration of documents" The same meaning was attached to the words "in accordance with the provisions of this Act ' which occurred at the end of sec 49 of the Act of 1877 having regard to the wording of the opening part of sec 17 of that Act The omission, therefore, does not make any alteration in the law as it stood *before the present Act was passed* *See notes to sec 17, "Operation of the Act,'* on p 28 above, and notes to sec 60 below

"Registered" means validly registered Where it is alleged by a person that the registration of a document is invalid, the burden of proving that it is invalid rests on that person (*j*)

(*g*) *Sohan Lal* v *Mohan Lal* (1928) 50 All 986, 118 I C 177, (28) A A 726 F B

(*h*) *Daual* v *Dharma* (1918) 41 Bom 550, 41 I C 273

(*i*) *Rama* v *Goura* (1921) 44 Mad 55, 59 I C 350, (21) A M 337

(*j*) *Puranchand* v *Nobin Chandra* (1904) 8 Cal W N 362 See also *Chhotey Lal* v *Collector of Moradabad* (1922) 49 I A 375 379, 44 All 514, 69 I C 44, (22) A.PC 279

Scope and object of the section.—Sec 17 provides for the compulsory registration of documents mentioned in the section That section is made effective by the present section which provides that any document so required to be registered shall not, unless it has been so registered— S. 49

(1) affect any immoveable property comprised therein, or

(2) be received as evidence of any transaction affecting such property

It is important to observe that the section does not say that an unregistered document which requires to be registered shall not be received *in* evidence It says *as* evidence of any transaction affecting the property It may be received *in* evidence for a collateral purpose even if that purpose does indirectly affect the property This subject is further dealt with in the notes on clauses (a) and (c)

Objection to non-registration, at what stage may be taken.—An objection that a document which required registration, but is not registered, is not admissible in evidence under this section may be taken in the Court of Appeal though no objection was taken to its admissibility in the Court of first instance (*k*) The Privy Council have, however, observed that this rule is subject to the limitations laid down in *Connecticut Fire Insurance Co* v *Kavanagh* (*l*), *viz*, that the Court should not allow the question to be raised unless it can be disposed of without deciding nice questions of fact in considering which the Court is in a much less advantageous position than the Courts below and unless the evidence establishes beyond doubt that the facts if fully investigated would have supported the new point The Privy Council therefore refused to allow an objection to the non registration of an agreement of sale to be raised when the agreement had been admitted throughout the litigation and had been treated as valid and no question affecting immoveable property was involved in the appeal (*m*)

Judicial notice.—If an unregistered document is not referred to in the pleadings or issues, or produced by a party before the Court, and the only way in which it is brought to the notice of the Court is that it is shown to one of the parties to the suit in cross examination who denies that it is a genuine document, the Court is not bound to take notice of the document, and it may act on other evidence given in the case and base its decision on that evidence (*n*)

(*k*) *Basaua* v *Kallapa* (1878) 2 Bom 489 *Safdar Ali* v *Lachman Das* (1879) 2 All 554 559 560, *Oomitool* v *Ghunnoo Singh* (1873) 19 W R 22, *Sarbaland* v *Chanda Singh* (1877) Punj Rec No 84 *Ningappa* v *Gyanaji* (1927) 51 Bom 231, 101 I C 155, (27) A B 157

(*l*) (1892) A C 473

(*m*) *M F Moola Sons, Ltd* v *Burjorjee* (1932) 59 I A 161, 10 Rang 242, 136 I C 737 (32) A PC 118

(*n*) *Yeshwadabai* v *Ramchandra* (1894) 18 Bom 66, 75

S. 49

CL. (a)—"AFFECT ANY IMMOVEABLE PROPERTY COMPRISED THEREIN."

"Affect any immoveable property comprised therein"—It is laid down in the first part of this section that no document required by sec 17 to be registered shall affect any immoveable property comprised therein, unless it has been registered The words "shall affect any immoveable property comprised therein did not occur in the Act of 1864 They appeared for the first time in the Act of 1866 The meaning of the word 'affect' has been explained by Spencer, J, in a Madras case (o) The learned judge said All sorts of transactions may remotely affect immoveable property Sec 49 of the Registration Act has to be read in the light of sec 17 of the same Act and sec 91 of the Evidence Act If this is done the word 'affect' will be seen to be a compendious term for expressing the longer phrase 'purporting or operating to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent'" In this passage sec 17 is used to explain the meaning of clause (a), while sec 91 of the Indian Evidence Act is used to explain the meaning of clause (c) Clause (a) refers to the document which is the transaction itself, while clause (c) refers to another document which is not the transaction itself but which is being used as evidence of the transaction As to clause (c) a subsequent passage of the judgment explained the reference to section 91 of the Indian Evidence Act by citing the decision of the Privy Council in *Varatha Pillai* v *Jeevarathammal* (p) where a petition reciting an antecedent gift, though not the transaction of gift itself was under sec 91 inadmissible as evidence of a gift having been made Such a recital if unregistered would also be inadmissible as evidence of a gift having been made under sec 49 (c) of the Registration Act The distinction between clause (a) and clause (c) of this section was also explained in an earlier Madras case (q) The learned judges said 'We must assume that the two parts of the section deal with different subjects The first part apparently presupposes that the document itself is the transaction or the mode in which it is carried out The second part of the section seems to relate to cases where the document itself is not the transaction but is only a record of a transaction or being itself a transaction contains a reference to or a recital of another transaction which affects the immoveable property comprised therein"

In cases decided before the Transfer of Property Act it was held that an unregistered deed of sale (r) or an unregistered endorsement of resale (s)

(o) *Sarasuathi immal* v *Paddayya* (1923) 46 Mad 349, 359, 71 I C 274, (23) A M 297, *Kanjee Moolji Bros* v *Shanmugam Pillai* (1933) 56 Mad 169, 139 I C 870, (32) A M 734

(p) (1919) 46 I A 285, 43 Mad 244 53 I C 901

(q) *Narayanan* v *Muthiah* (1912) 35 Mad 63, 74 8 I C 520 See also *Somu* v *Rangammal* (1871) 7 Mad H C 13, 17 18

(r) *Somu* v *Rangammal*, *supra*

(s) *Umedmal* v *Davu* (1878) 2 Bom 547

could not affect the property referred to Under the Transfer of Property Act such unregistered documents would be invalid as deeds of sale S. 49

CL. (c)—"BE RECEIVED AS EVIDENCE OF ANY TRANSACTION AFFECTING SUCH PROPERTY."

"Be received as evidence of any transaction affecting such property."— By sec 13 of the Registration Act 16 of 1864, it was enacted that no document required to be registered under that section should be received in evidence in any Civil Court or acted on by any public officer Sec 49 of Act 20 of 1866 contained a similar provision When the Registration Act 8 of 1871 was passed, the language of sec 49 was modified and rendered less stringent the words being, no document required to be registered shall unless registered be received in evidence of any transaction affecting any immoveable property comprised therein ' The language of sec 49 of Act 8 of 1877 was the same as that of Act 8 of 1871, and the same language is reproduced in the present section The distinction between clause (a) and clause (c) has been explained in the note on clause (a) This clause refers to a document which is not the transaction itself but which is being used as evidence of the transaction The clause, however, uses the expression as evidence and not in evidence It is therefore permissible to use an unregistered document for a collateral purpose, i e, a purpose other than that of creating declaring assigning, limiting or extinguishing a right to immoveable property (t) This is now expressly enacted in the proviso added by the Amending Act 21 of 1929, and the subject will be further discussed in the note on the proviso

Proviso

Proviso — The proviso was added by the Amending Act 21 of 1929 Its purpose is (1) to declare the law under which sec 49 (c) is construed as not forbidding the use of an unregistered document as evidence of a collateral transaction not required to be registered, and (2) to empower Courts to admit unregistered documents in evidence for the purpose of proving part performance

Collateral transaction—Collateral purpose.

Collateral transaction not required to be effected by registered instrument —The proviso enacting that a document which is requred to be registered may, though not registered, be received as evidence of any collateral transaction not required to be effected by registered instrument is declaratory of what was previously the law In *Ulfatun Nissa* v *Hosain Khan* (u), a Full Bench of the Calcutta High Court held that the words " no document required by sec 17 to be registered shall be received

(t) *Bai Gulabbai* v *Shri Datagarji* (1907) 9 Bom L.R 393

(u) (1883) 9 Cal 520, 525

S. 49 as evidence of any transaction affecting immoveable property" mean no document required by sec 17 to be registered shall be received as evidence of any transaction so far as it affects immoveable property Therefore a compulsorily registrable document, though unregistered and inadmissible as evidence of a transaction affecting immoveable property, may be admitted as evidence of collateral facts (t), or for any collateral purpose that is for *any purpose other than that of creating, declaring, assigning, limiting or* extinguishing a right to immoveable property (u) An instance of the application of this rule is the case of *Varatha Pillai* v *Jeevarathammal* (x) A dispute in mutation proceedings was settled by an oral gift of the immoveable property *on the 8th October On the 10th October petitions were filed in the Court of* the Collector reciting the fact of the gift The gift was invalid because under sec 123 of the Transfer of Property Act the gift could only have been effected by a registered instrument The Privy Council held that under sec 91 of *the Indian Evidence Act the petition could not be used as evidence of the* gift But their Lordships said, "although the petitions . are not admissible to prove a gift they may nevertheless be referred to as explaining the nature and character of the possession thenceforth held by Duraisami (the donee)" *Their Lordships did not refer to sec 49, for the petition being a mere recital* did not require registration, but the case shows that a document inadmissible as evidence of a transaction may be used as evidence for a collateral purpose The High Courts of Calcutta (y), Bombay (z), Allahabad (a), Madras (b), Patna (c), Lahore (d) and Rangoon (e) have held that a document which requires registration under sec 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admisssible to prove the character of the possession of the person who holds

(t) *Babu Ganga Nath* v *Rabel Nath* (1906) Punj L R 143 *The Hope Mills Ltd* v *Sir C J Readymoney* (1912) 13 Bom L R 162, 10 I C 748, *Maruti* v *Gopal* (1932) 34 Bom L R 418 138 I C 433 ('32) A B 305

(w) *Bai Gulabbai* v *Shri Datagarji* (1907) 9 Bom L R 393

(x) (1919) 46 I A 285, 292, 43 Mad 244, 53 I C 901

(y) *Lalla Gopal Chand* v *Shaikh Liakut Hossein* (1874) 25 W R 211 (lease), *Jagannath* v *Sri Chandai Bibi* (1921) 26 Cal W N 65, 67, 67 I C 31, ('21) A C 647, *Galstaun* v *Profulla Kumar* (1932) 36 Cal W N 583, 141 I C 320, ('32) A C 634 (a lease)

(z) *Thakore Fatesingji* v *Bomanji* (1903) 27 Bom 515, 542 543 (lease) see also *Sambhubhai* v *Shivladas* (1880) 4 Bom 89

(a) *Jhamplu* v *Kutramani* (1917) 39 All 696, 42 I C 713 (release)

(b) *Nadepena* v *Chinnaiudda* (1923) 45 Mad L J 667, 674, 79 I C 570 ('24) A M 292

(c) *Maharani Janki* v *Bir Bhikhan* (1924) 3 Pat 349, 79 I C 26, ('24) A P 641, *Bhusan Sutradhar* v *Guhiram Sutradhar* (1934) 146 I C 4

(d) *Ata Muhammad* v *Shankar Das* (1925) 6 Lah 319, 88 I C 872 ('25) A L 491, *Qadar Baksh* v *Wanga Mal* (1923) 4 Lah 249, 73 I C 889, ('23) A L 495, *Kartar Singh* v *Mt Mehr Nishan* ('34) A L 885

(e) *Maung Sin* v *Maung So Min* (1931) 8 Rang 556, 129 I C 511, ('31) A R 40 (a usufructuary mortgage)

under it. There are some decisions to the contrary of the Punjab Chief Court (*f*) but they seem to have been treated as no longer law in a later Lahore case (*g*). If a person has come into possession under a permanent lease invalidly registered he may use the lease to show that his possession is that of a tenant and that he has acquired a right of occupancy by adverse possession (*h*). S. 49

There are however some decisions with reference to sec. 20 of the Limitation Act which are difficult to reconcile with the ruling of the Privy Council in *Varatha Pillai's* case. By sub-sec. 1 of that section it is provided that where interest on a debt is paid as such by the debtor or where part payment of a debt is made by the debtor a fresh period of limitation is to be computed from the date of payment. By sub-sec. (2) it is provided that where mortgaged land is in the possession of the mortgagee the receipt of the rent or produce of the land shall be deemed to be a payment for the purposes of sub-sec. (1). The question arises in this way. *A* executes a deed of mortgage in January 1917 of his land to *B* to secure payment of Rs. 700 and puts *B* in possession of the land. The deed is not registered. In January 1922, that is more than three years after the date of the deed, *B* files a suit to recover the principal sum from *A* personally relinquishing his claim to the land as the deed is not registered. *A* pleads limitation. *B* contends that the receipt by him of the rent and produce of the land since the date of the mortgage as mortgagee in possession saves the bar of limitation under sec. 20 of the Limitation Act. Is the suit barred by limitation? It has been held by the High Courts of Madras (*i*) and Bombay (*j*) that it is, the reason given being that to save limitation *B* must prove that he received the rents and profits as *mortgagee in possession* which he can only do by putting the unregistered mortgage deed in evidence. But sec. 49 does not prohibit the unregistered deed being put *in* evidence. It prohibits the unregistered deed being used *as* evidence of the mortgage and *Varatha Pillai's* case shows that it may be used to show the character of the possession.

As evidence of character of possession.—The use of an unregistered deed for this purpose has already been explained in the preceding paragraph.

As evidence of the amount of, and liability for, dower.—*A* gives his son in marriage to *B* and agrees to pay Rs. 1,000 to *B* for her dower. *A* then executes a deed of transfer of an immoveable property to *B* in lieu of dower but refuses to register the deed. *B* sues *A* to recover the dower.

(*f*) *Jawan v. Chandu* (1913) P. R. 83, 18 I. C. 918 (gift); *Jat Mal v. Bhag Ram* (1916) P. R. 35, 33 I. C. 348 (partition).

(*g*) *Hari Mulraj ... v. Shankar Das* (1925) 6 Lah. 310, 88 I. C. 872, (1925) A. L. 491.

(*h*) *Arjun Chandra v. Tralukya* (1933) 37 C. W. N. 333, 146 I. C. 240, (1933) A. C. 610.

(*i*) *Pedda ... v. Kandasami* (1884) 7 Mad. 539.

(*j*) *Te... v. Shidramapa* (1895) 19 Bom. 663.

S. 49 The deed though unregistered is admissible in evidence to prove the amount of dower and *A*'s promise to pay the same (*k*)

As evidence of the right to recover a deposit—Where a lessee has deposited money with his lessor as security for the due performance of the conditions of the lease, and the lease is subsequently determined by the lessor the lease though unregistered, is admissible in evidence in a suit by the lessee to recover the deposit, to prove the fact that the money was deposited and the lessee's right to recover it (*l*)

As evidence of relationship.—In a Punjab case (*m*) it was held that an unregistered deed of gift, in which the donor stated that the donee was his wife was admissible in evidence to prove the admission of relationship, though inadmissible as evidence of the gift In a later case (*n*), however, it was held that an unregistered deed in which *A* relinquished his claim to immoveable property in favour of *B* and in which he admitted that *B* was the adopted son of a third party could not be used to prove the admission of adoption as such admission amounted to a declaration of the title of *B* to the property

As evidence of handwriting.—An unregistered document which is *impeached as a forgery by the alleged executant may be admitted in evidence* to compare the handwriting of the alleged executant with his admitted handwriting (*o*)

As evidence of satisfaction of a decree—An unregistered document, though inadmissible as evidence of a transaction affecting immoveable property comprised therein, is admissible in evidence to prove that a decree passed in favour of one of the parties against the other has been satisfied (*p*)

As evidence of an acknowledgment to save limitation—If a debtor executes a deed of sale or mortgage of his immoveable property to his creditor in consideration, wholly or in part, of the debt acknowledged to be due in the deed, and the deed is not registered the deed, though inadmissible to prove the sale or mortgage, is nevertheless admissible to prove the acknowledgment so as to give a fresh period of limitation under sec 19 of the Limitation Act (*q*) There are, however, cases under sec 20 of the

(*k*) *Muhammad Buksh* v *Msst Amir Begam* (1918) P R 23 44 I C 837

(*l*) *Ardesir* v *Syed Sardar Ali Khan* (1909) 33 Bom 610 4 I C 804

(*m*) *Msst Satara Begum* v *Msst Husaini* (1897) P R 16

(*n*) *Ali Bakhsh* v *Raushan* (1900) P L R p 481

(*o*) *Gobind* v *Dharam* (1881) 3 All W N 138

(*p*) *Dina Nath* v *Matimala* (1906) 11 Cal W N 342

(*q*) *Khushalo* v *Behari Lal* (1881) 3 All 523 (sale), *Nundo Kishore* v *Msst Ramsookhee* (1880) 5 Cal 215 (sale) *Mugniram* v *Gurmukh Roy* (1899) 36 Cal 334 (mortgage), *Syad Mahomed* v *Jaisukh* (1880) P R 88 (mortgage), *Radha Kishan* v *Hukam Chand* (1932) 136 I C 14, (32) A L 154, *Karam Singh* v *Msst Maya Wanti* (1932) 140 I C 387, (32) A L 592, *Darindar Singh* v *Lachhmi Devi* (1931)12 Lah 239, 129 I C 281, (30) A L 985

Limitation Act which are inconsistent with this rule These have been referred to in the note "Collateral transaction not required to be effected by registered instrument" S. 49

What is the period of limitation to recover money lent under a mortgage deed which is invalidly registered? Is it three years as on an unregistered deed or six years as on a registered deed? The Calcutta High Court has held that it is six years (r)

As evidence of the date of taking possession — An unregistered agreement of lease though inadmissible as evidence of the lease for want of registration may be received in evidence to prove the date of taking possession (s)

As evidence of the amount of compensation for use and occupation. Similarly the unregistered lease may be admitted in evidence for the purpose of ascertaining the fair amount to be charged for use and occupation (t)

As evidence of attornment *A* mortgages his property to *B* *A* pays off the mortgage and *B* gives a notice of attornment to the tenants of the property stating that the mortgage had been extinguished and the property redeemed The notice being unregistered is not admissible as evidence that the mortgage has been redeemed though it is evidence for its own proper purpose of proving the attornment (u)

The remaining notes under the proviso are arranged under the following five heads

(1) Specific performance

(2) Damages

(3) Divisible transaction

(4) Indivisible transaction

(5) Other topics

Specific performance

Specific performance of an unregistered agreement of sale.— An agreement of sale may be contained in a document which itself creates a right in immoveable property and so requires registration See note under sec 17 (2) (v) "Document itself creating a right in immoveable property", at p 81 If such a document is not registered, is it admissible in evidence

(r) *Jogiree v Bhut Nath* (1902) 29 Cal 654 See Limitation Act Sch I, Art 116

(s) *Abdulla Kalu v Muhammad Maqbul* (1923) 45 All 565, 74 I C 822, (23) A A 603

(t) *Swaminatha v Sungira* (1911) 11 I C 23, *Kodulal v Beharilal* (1932) 137 I C 156, (32) A S 60

(u) *Antaji v Dattaji* (1895) 19 Bom 36 42

S. 49 in a suit for specific performance? In the Bombay case of *Burjorji* v *Muncherji* (i) and in earlier cases in Madras (w) and Calcutta (x) it was held that though creating a right in land an unregistered agreement of sale or mortgage might nevertheless be used for the purpose of obtaining specific performance In later cases, however, it was held that a document which is inadmissible in evidence as an instrument of transfer cannot be used as evidence of a contract in a suit for specific performance (y) These cases were approved by the Privy Council in *Skinner* v *Skinner* (z) where their Lordships said that to allow such a document ' to be used as the foundation of a suit for specific performance appears to their Lordships to be little more than an evasion of the [Registration] Act ' This statement of the law must now be taken as subject to the doctrine of part performance enacted in sec 53A of the Transfer of Property Act, 1882 One of the cases cited with approval in *Skinner* v *Skinner* is *Sanjib Chandra* v *Santosh* (a) where Rankin, C J, refused to admit in evidence, in a suit for specific performance, an unregistered agreement of lease because it created a present demise although the lessee had taken possession under the agreement The learned Chief Justice said that ' it is extraordinarily difficult to suppose that possession taken under a document can make any difference to its admissibility" But in *Puchka Lall* v *Kunj Behari* (b) the defendant was in possession under an unregistered sale deed and Jenkins, C J, treated the unregistered deed as evidence of the contract of sale in order to establish a defence under the doctrine of part performance The learned Chief Justice said "This is no invasion or evasion of the Registration Act It is merely securing to a party those rights to which he is entitled apart from the Act" At the time of these decisions part performance was merely a doctrine of equity, but it has since become a statutory right under sec 53A of the Transfer of Property Act and sec 27A of the Specific Relief Act. These sections are referred to in the proviso which expressly enacts that an unregistered document, though

(i) (1881) 5 Bom 143
(w) *Adakkalam* v *Theethan* (1889) 12 Mad 505, 507, *Nagappa* v *Devu* (1891) 14 Mad 55, *Mangamma* v *Ramamma* (1914) 37 Mad. 480, 16 I C 587
(x) *The Bengal Banking Corporation* v *Mackertich* (1884) 10 Cal 315
(y) *Sanjib Chandra* v *Santosh* (1922) 49 Cal 507, 69 I C 877, (22) A C 436 (agreement to lease) *Ramling* v *Bhaguant* (1926) 50 Bom 334 96 I C 334, (26) A B 375 (sale), *Satyanarayana* v *Chinna Venkata Rao* (1926) 49 Mad 302 (26) A M 530 (sale) *Parmeshri* v. *Autar Singh* (1921) 3 Lah L J 173, 178, 67 I C 144, (21) A L 113, *Diwan Singh* v *Garbachan Singh* (1932) 137 I C 41 (32) A L 276
(z) (1929) 56 I A 363, 371, 33 Cal W. N 1150, 119 I C 633 (29) A PC 269, explained in *Sohan Lal* v *Atal Nath* (1933) 31 All L J 1584, (33) A A 846 and in *Jagannadha* v *Lakshminarayana* (1930) 58 Mad L J 683, 125 I C 540, (30) A M 683
(a) (1922) 49 Cal 507 520, 69 I C 877, (22) A C 436
(b) (1913) 18 Cal W N 445 447, 20 I C 803

required to be registered may be used as evidence of a contract in a suit for specific performance. The proviso therefore supersedes *Skinner v. Skinner* (c) as well as *Sanjib Chandra v. Santosh* (d). It is curious that this part of the proviso is not limited to cases where there has been delivery of possession. In this respect the proviso seems to go further than is necessary for the purpose of recognizing the doctrine of part performance. Where there has been no part performance the criticism in *Skinner v. Skinner* as to the use of an unregistered deed as evidence of the contract is undoubtedly just, for it is difficult to understand how the contract which is a step preliminary to the execution of the instrument can be described as a collateral transaction. S. 49

Specific performance of an unregistered agreement of lease.—It will be convenient to state the law before and after the Amending Act 21 of 1929 in separate paragraphs.

Before the amendment. Before the amendment of sec. 49 by the addition of the proviso there was a conflict of opinion as to whether an agreement of lease creating a present demise which was inadmissible as evidence of a transaction affecting the property could be admitted in evidence to prove the contract of lease in a suit for specific performance. The High Courts of Bombay (e) and Madras (f) held that the lease not being registered could not be admitted, while the High Court of Calcutta held that it could be admitted (g). But in *Hemanta Kumari Debi v. Midnapur Zamindari Co.* (h) which was a suit for specific performance the Privy Council held that if the agreement of lease in that case created a present demise it *could not be received in evidence.* This was followed by Rankin, C.J. in *Sanjib Chandra v. Santosh* (i) and in the subsequent case of *Skinner v. Skinner* (j)

(c) *Skinner v. Skinner* (1929) 56 I. A. 363, 33 Cal W N 1150, 119 I C 633, ('29) A. PC 269.

(d) *Puchha Lall v. Kunj Behari* (1913) 18 Cal W N 445, 20 I C 803.

(e) *Purmanandas v. Dharsey* (1886) 10 Bom 101, 104.

(f) *Narayanan v. Muthiah Servai* (1912) 35 Mad 63, 8 I C 590 F B disapproving *Konduru v. Gattu Rukki* (1907) 17 Mad L J 218; *Morgan & Son v. Fernandes* (1916) 30 Mad L J 519, 33 I C 439.

(g) *Satyendra Nath v. Anil Chandra* (1908) 14 Cal W N 65, 5 I C 38 following (1907) 17 Mad L J 218 *supra*; *Sarat Chandra v. Shyam Chand* (1912) 39 Cal 603, 14 I C 701; *Kedar Nath v. Poorasundari* (1910) 11 Cal L J 548, 6 I C 634; *Baranashi v. Japat* (1919) 23 Cal W N 220, 229, 63 I C 118; *Shyam Kishore v. Umesh* (1919) 24 Cal W N 463, 55 I C 154; *Surendra Nath v. Gopal* (1911) 12 Cal L J 464, 8 I C 794.

(h) (1919) 46 I A 240, 47 Cal 485, 53 I C 534.

(i) (1921) 49 Cal 507, 69 I C 877, ('22) A C 436. See also *Badal Chandra v. Debendra Nath* (1933) 37 Cal W N 473, 145 I C 892, ('33) A C 612.

(j) (1929) 56 I A 363, 33 Cal W N 1150, 119 I C 633, ('29) A. PC 269.

S. 49 which was decided by the Privy Council eight months before the Amending Act came into force

After the amendment—The proviso added by the Amending Act 21 of 1929 expressly provides that an unregistered document affecting immoveable property may, though not registered, be received in a suit for specific performance as evidence of the contract On this point therefore the Privy Council cases of *Hemanta Kumari* and *Skinner* v *Skinner* must be treated as overruled In cases where there has been part performance by delivery of possession sec 27A of the Specific Relief Act (also inserted by Act 21 of 1929) expressly provides that if possession has been given and taken under an agreement of lease, then, although the agreement requires registration and has not been registered, either party may sue the other for specific performance As observed in the last paragraph it is curious that as regards suits for specific performance the proviso is not limited to cases of part performance

Damages.

Damages for breach of an unregistered agreement of lease—The proviso to sec 49 makes an exception only in the case of suits for specific performance and in cases where there has been part performance of the contract It follows therefore that an unregistered agreement of lease creating a present demise cannot be received as evidence of the contract in a suit for damages for breach of the agreement It was so held by the Bombay High Court (*k*) In the Bombay case, *A* agreed to grant a lease of his property to *B* *B* executed a writing containing the terms of the lease and sent it to *A* for his signature *A* did not sign the writing nor return it to *B* *B* sued *A* for a decree that *A* should be ordered to lodge the document for registration and do all such acts as may be necessary to obtain registration thereof, that if necessary another similar document might be prepared and registered, and that in the alternative, *A* should be ordered to pay Rs 4,000 as damages Sargent, C J, held that the document not being registered was not admissible to prove the contract A similar case arose in Madras (*l*) In that case *A* agreed to grant a lease to *B*, but subsequently dispossessed *B* and refused to execute a lease *B* sued *A* for damages and a Full Bench of the Madras High Court held that though the agreement was not registered it was admissible in evidence to prove the contract The Madras High Court has in subsequent cases (*m*) doubted the correctness of this decision, and the Lahore High Court has refused to follow it (*n*)

(*k*) *Hurjivan* v *Jamsetji* (1885) 9 Bom 63

(*l*) *Rajah of Venkatgiri* v *Narayanan* (1894) 17 Mad 456 F B

(*m*) *Narayanan* v *Muthiah Servai* (1912) 35 Mad 63, 68, 8 I C 520, *Swaminatha* v *Ramaswami* (1921) 44 Mad 399, 405 62 I C 354, ('21) A M 72

(*n*) *Bahawal* v *Amrik Singh* (1932) 142 I C 424, ('32) A L 655

Compensation for use and occupation Although an unregistered lease is not admissible as evidence of the contract in a suit for damages for breach of the agreement to lease, yet if the defendant is in possession under an unregistered lease the lease may be admitted in evidence for the collateral purpose of ascertaining the amount of compensation for use and occupation (*o*). S. 49

Divisible transaction

Divisible transaction If the transaction is divisible and one part can be effected by an unregistered instrument and the other requires registration the instrument may be used as evidence of the part which does not require registration. But the part which is not registered must be collateral and not dependent upon the part which requires registration. In a Madras case (*p*) Muttusami Ayyar J. said: "The test therefore is whether the transaction evidenced by the particular instrument is single and indivisible, or whether it really evidences two transactions which can be severed from each other, the one as creating an independent personal obligation and the other as merely strengthening it by adding a right to proceed against immoveable property. But it should be remembered that it is not enough that there is an obligation to pay a sum of money, but that it is also necessary that the obligation should have an independent existence and be in no way contingent or conditional on the breach of some obligation relating to immoveable property created by the same instrument, for the contingency or the condition and the obligation would then be parts of one indivisible transaction."

In the case of *Vyravan Chetti* v. *Subramanian Chetti* (*q*) a prior mortgagee and a puisne mortgagee entered into an agreement (1) that their mortgage rights should stand on a footing of equality, and (2) that the realizations on the mortgages should be equally divided. The suit related to the question of the moneys realized on the mortgages. The Privy Council said that in such a suit the document embodying the agreement, though unregistered, was admissible in evidence, but that it would have been inadmissible in a suit with reference to the transaction regulating the mortgage rights. Similarly in a Bombay case (*r*) a subsequent contract between the mortgagor and the mortgagee altered a mortgage of four immoveable properties for Rs. 1,25,000 to one of three properties for Rs 1,00,000. The contract being unregistered was inadmissible as evidence of a transaction affecting the property mortgaged, but was admissible as evidence of a variation of the contract of mortgage which had the effect of discharging the mortgagor's sureties from liability.

(*o*) *Swaminatha* v. *Sivagami* (1911) 11 I.C. 23; *Kalulal* v. *Beharilal* (1932) 137 I.C. 150, ('32) A.S. 60.

(*p*) *Sambayya* v. *Gangayya* (1890) 13 Mad 308, 311.

(*q*) (1920) 47 I.A. 188, 43 Mad 660, 56 I.C. 642.

(*r*) *Keshavlal* v. *Pratapsing* (1932) 56 Bom 101, 137 I.C. 564, ('32) A.B. 168.

S. 49 **Personal covenant in a mortgage bond.**—An unregistered bond whereby a person obliges himself to repay a loan of Rs 100 and upwards, and at the same time mortgages his immoveable property as security for such payment can be received in evidence in support of a claim to enforce the money debt, though, being unregistered, it cannot be received in evidence in a suit for sale or foreclosure The reason is that the *personal* covenant in the bond is divisible and severable from the clause by which the property is charged (*s*) But where the transaction is indivisible, that is, the loan and the mortgage cannot be separated, the bond cannot be received in evidence to prove the loan (*t*) It is clear that where a bond does not contain a personal covenant at all, the mortgagee is not entitled even to a money decree (*u*)

Thus in a usufructuary mortgage the nature and terms of the security negative a personal liability, and if the deed were inadmissible for want of registration as *evidence of a mortgage*, it would not support a suit to recover the money advanced

The decisions were to the same effect even under the Acts of 1864 and 1866 except in the Madras High Court, though the words in the corresponding section of those Acts were, no instrument required by sec 17 to be registered shall be received in evidence in any civil proceeding, unless it shall have been registered' The Courts other than the Madras High Court held that those words ought not to be read in their widest sense, but only as rendering the mortgage bond inadmissible in evidence for the purpose of *affecting the mortgaged property* (*v*) On the other hand the Madras High

(*s*) *Sheo Dial* v *Prag Dat* (1881) 3 All 229 [F B], *Jaddu* v *Bhagwat* (1910) 7 All L J 71, 5 I C 519, *Lachman Singh* v *Kesri* (1882) 4 All 3 *Kristo Lall* v *Bono Malee* (1880) 5 Cal 611, *Ulfatunnissa* v *Hosain Khan* (1883) 9 Cal 520 [F B], *Gour Churn* v *Jinnut Ali* (1882) 11 Cal L R 166, *Neridhari Roy* v *Mt Bissessary* (1897) 2 Cal W N 511, *Sri Seshathri* v *Sankara* (1873) 7 Mad H C 296, *Guduri* v *Rapaka* (1874) 7 Mad H C 348, *Jagappa* v *Latchappa* (1882) 5 Mad 119, *Gomaji* v *Subbarayappa* (1892) 15 Mad 253, *Sriramulu* v *Chinna* (1902) 25 Mad 396, 398, *Pulaka Veetil* v *Thiruthipalli* (1909) 32 Mad 410 1 I C 1, *Vani* v *Bani* (1896) 20 Bom 553 557, *Syad Mahomed* v *Jaisukh* (1880) Punj Rec No 88, p 210, *Khuddu Lall* v *Kunj Lall* (1881) Punj Rec No 80, *Prem Singh* v *Mula Lal* (1883) Punj Rec No 10, *Basant Lal* v *Jawahar Singh* (1925) 7 Lah L J 3, 87 I C 609, ('25) A L 356, *Motiram* v *Daw Mnin* ('34) A R 196

(*t*) *Mattongeney* v *Ramnarain* (1879) 4 Cal 83 [a case which turned on the special language of the document], *Jaisukh* v *Syad Mahomed* (1880) Punj Rec No 39

(*u*) See *Fatteh Singh* v *Mian Singh* (1883) Punj Rec No 131

(*v*) *Lachmiput* v *Mira* (1869) 4 Beng L R 18 [F B], *Tukaram* v *Khandoji* (1869) 6 Bom H C O C 134, *Sangappa* v *Basappa* (1870) 7 Bom H C A C 1, *Seeta* v *Jugurnath* (1865) 4 Agra 170

Court held that those words rendered the mortgage bond inadmissible also for the purpose of proving the debt (w) S. 4

Where an unregistered mortgage bond contains a personal covenant to repay the loan secured by the mortgage the mortgagee is entitled to recover the loan with interest whether it is simple or compound interest.

Illustration

A executes a mortgage bond to *B* whereby he agrees to pay to *B* within 12 months Rs 1000 lent by *B* to *A* with interest and mortgages his immoveable property to secure the loan It is further agreed that if *A* fails to pay the loan within 12 months *B* should be at liberty to sell the property and pay himself the mortgage debt out of the net sale proceeds The mortgage bond is not registered *A* fails to repay the loan *B* sues *A* to recover the amount of the loan with interest *and* for sale of the mortgaged property The bond, though unregistered can be received in evidence for proving the debt, but not for enforcing the security by a sale of the property The Court may therefore pass a money decree against *A* but not a decree for sale

Suit by purchaser for refund of purchase-money.—A deed of sale consists of two parts namely an acknowledgment of the receipt of the purchase money, and a conveyance of the property The deed, though unregistered is admissible in evidence as an acknowledgment of the receipt of the purchase money, though it is not admissible to establish a title to the property (x) *A* executes a deed of sale of his immoveable property to *B* for Rs 500 *A* refuses to register the deed *B* sues *A* to recover the Rs 500 The deed though unregistered can be received in evidence to prove the *receipt of the Rs 500 by A* *The deed may be used for the above purpose* even if *B* claimed a *charge* on the property and sued to have the property sold for payment of the Rs 500 *B* is entitled to the charge though the deed is not registered The charge is a statutory charge created by the Transfer of Property Act, 1882, sec 55 (6) (b) The same principle applies where an unpaid vendor who has transferred property by an unregistered deed, and put the purchaser in possession, seeks to recover the price from the purchaser and claims a charge upon the property for the unpaid purchase money (y). See note "Equitable charge" at p 41

(w) *Acheyya v. Hiramaj Rau* (1869) 4 Mad H C 278, *Swami Chetty v. Ethirajulu* (1917) 40 Mad 547, 34 I C 833, was decided on the special facts of the case

(x) *Shib Pershad v. Unnopoorna* (1869) 12 W R 435, *Sambhu v. Nama* (1912) 35 Bom 438, 441, 12 I C 362

(y) (1912) 35 Bom 438, 12 I C 362 *supra*, *Virchand v. Kumaji* (1893) 18 Bom 48 See Transfer of Property Act, 1882, sec 55 (4) (b)

S. 49 *Indivisible transaction.*

Indivisible transaction.—Where a transaction is indivisible, and the registration of the document evidencing it is compulsory under sec 17, the document is not admissible in evidence even to prove the personal liability of the defendant, if not duly registered (z) This principle is illustrated by the cases cited below

Specific performance of a covenant contained in an unregistered document—Where a suit is brought for specific performance of a covenant contained in an unregistered document which requires registration, and the covenant cannot be separated from the transaction relating to the immoveable property comprised in the document, the document is not admissible in evidence to establish the right to specific performance (a) The proviso to sec 49 allows an unregistered document to be used as evidence of a contract in a suit for specific performance It is submitted that this does not apply to a covenant which is a term of the deed, but only to the executory contract of which the document purports to be the executed contract or deed The case of *Sambayya* v *Gangayya* which is the subject of the following illustration is believed to be still good law

Illustration

A lets his house to *B* for a period of three years The lease is not registered The lease contains a covenant on the part of *B* that if he fails to keep the house in good repair, he should purchase the house for a specified sum *B* fails to keep the house in good repair *A* sues *B* for specific performance of the covenant requiring *B* to purchase the house The document, not being registered, is not admissible in evidence either to prove the lease for three years or the stipulation for the purchase The covenant sought to be enforced being a contract depending on the lease, and the latter being invalid for want of registration, the former must also fail *Sambayya* v *Gangayya* (1890) 13 Mad 308

If a compromise decree embodying a lease is inadmissible for want of registration it cannot be used to prove a charge for rent, for that is a term of the lease (b)

Damages for breach of a covenant contained in an unregistered document.—Where a suit is brought for damages for breach of a covenant contained in an unregistered document which requires

(z) *Kristo Lall* v *Lonomalee* (1880) 5 Cal 611, *Thakur Das* v *Fatte Khan* (1880) Punj Rec No 60

(a) *Sambayya* v *Gangayya* (1890) 13 Mad 308

(b) *Sachindra Mohan* v *Ramjash* (1932) 11 Pat 98, 136 I C 54, ('32) A P 97

registration and the covenant cannot be separated from the transaction relating to the immoveable property comprised in the document, the document cannot be received in evidence to support the claim for damages (c) S. 49

Illustrations

(1) *A* executes a lease of 13 bighas of land for a period of three years to *B* at a rent of Rs 5 per bigha per annum The lease contains a stipulation that if *A* fails to deliver any portion of the land he should pay damages at the rate of Rs 40 per bigha The lease is not registered *A* fails to deliver 9 out of the 13 bighas *B* sues *A* to recover Rs 360 as damages Here the leasing of the land cannot be separated from *A*'s personal liability for damages, and the lease cannot be received as evidence even of *A*'s personal liability *The contract is one and indivisible for the damages are to be estimated* according to the area of land undelivered, and this cannot be determined *except from the deed itself* *Martin* v *Sheo Ram* (1882) 4 All 232

(2) *A* executes a lease of his land to *B* for 9 years The lease contains a stipulation that if *B* should incur any loss in consequence of disputes relating to the land between *A* and his relations *A* should indemnify *B* for the loss Two years after the date of the lease *C*, a relation of *A* obtains a decree against *A* and *B* for possession of the land with mesne profits, and *B* is dispossessed of the land *B* also pays the mesne profits to *C* *B* then sues *A* to recover Rs 360 under the indemnity clause contained in the lease The *lease is not admissible in evidence to prove even A's personal liability to* indemnify *B* The indemnity clause cannot be separated from the lease itself, as the lease must necessarily be looked at to determine whether the defendant has incurred liability under it *Gurunath* v *Chenbasappa* (1894) 18 Bom 745

(3) *A* executes a deed of conveyance of his immoveable property for Rs 500 to *B* The deed contains a covenant for title, that is, a stipulation on the part of *A* that he is entitled to convey the property The deed is not registered It turns out that *A* had no interest in the property at the date of sale, with the result that *B* is dispossessed of the property *B* sues *A* for damages for breach of the covenant The deed cannot be received as evidence of the covenant The reason is that the evidence of the covenant is contained in the deed itself and the effect of the covenant cannot be got at without looking at the portion of the deed which contains the *grant* of the property *Raju Balu* v *Krishnarav* (1878) 2 Bom 273, 285 287, with facts slightly altered

(c) *Martin* v *Sheo Ram* (1882) 4 All 232 *Venkatrayalu* v *Papi Reddi* (1885) 8 Mad 182, *Gurunath* v *Chenbasappa* (1894) 18 Bom 745, *Raju Balu* v *Krishnarav* (1878) 2 Bom 273 285 287

S. 49 immoveable properties allotted to him under the deed (p) But though a document which requires registration is not registered, oral evidence is admissible to prove facts which do not constitute the *terms* of the document Thus the fact of partition may be proved by oral evidence, although the deed embodying the terms of partition cannot be proved for want of registration (q) The principle is that the fact of the existence of a particular relationship may be shown by oral evidence, though the terms which govern such relationship appear to be in writing Thus a tenancy may be proved by oral evidence, though there is a lease which is unregistered (r) Similarly where a tenancy is admitted, the nature of the tenancy, *e g*, whether the rent is liable to enhancement, may be proved without putting the lease in evidence (s) But rent reserved by an unregistered lease cannot be proved by oral evidence, for it is a *term* of the lease (t) A landlord therefore, under an unregistered lease, to whom rent is due, cannot recover the rent payable under the lease, he is entitled to recover only as for use and occupation (u), but he may use the unregistered lease for the collateral purpose of ascertaining the fair amount of compensation for use and occupation (v) In Calcutta it has been held that where a lease is executed, but not registered as required under sec 107 of the Transfer of Property Act, oral evidence is admissible to prove the *rent* agreed upon by the parties (u), but a different view has been taken in Madras (x) See notes to sec 17 (1) (d), Variation of lease," on p 72 above

Where an instrument required by sec 17 to be registered is destroyed by fire or otherwise before the expiry of the period allowed for registration, secondary evidence of its contents is admissible in a suit for a declaration of the transferee s title to the property and to compel the transferor to execute

(p) *Kachubai* v *Krishnabai* (1877) 2 Bom 635

(q) *Chhotalal* v *Bai Mahakore* (1917) 41 Bom 466, 40 I C 83, *Munna Lal* v *Narayan* (1933) 144 I.C. 312, ('33) A N 270 See notes to sec 17 (1) (b), "Change of status," on p 50 above

(r) *Banka Behary* v *Rai Chandra* (1909) 14 Cal W. N 141, 2 I C 202, *Venkatagiri Zamindar* v *Raghava* (1886) 9 Mad 142, 144, dissenting from *Mangali* v. *Raman* (1884) 7 Mad 226, 231, *Ameer Ali* v. *Yakub Ali* (1914) 41 Cal 347, 23 I C 509, *Chavali Subamma* v *Tukuru* (1915) 28 Mad L. J 361, 27 I C 804

(s) *Port Canning Land Improvement Co* v *Katyani* (1919) 47 Cal 280, 286, 46 I A 279, 282, 53 I C 522

(t) *Augustien* v *Challis* (1847) 1 Ex 279, *Chhota Lal* v *Bai Mahakore* (1917) 41 Bom 466, 472, 40 I C 83

(u) *Ramchandra* v *Tama* (1912) 36 Bom 500, 503, 15 I C 830, *Puroma* v *Prollad* (1869) 12 W R 289

(v) *Swaminatha* v *Suigami* (1911) 11 I C 23, *Kodulal* v *Beharilal* (1932) 137 I C 136, ('32) A S 60

(u) *Ameer Ali* v *Yakub Ali* (1914) 41 Cal 347, 23 I C 509, *Sarat Chandra* v *Sm Saranjini* (1922) 27 C W. N 897, 79 I C 257, ('24) A.C 135

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another instrument The words "unless it has been registered" at the end of the section apply to instruments which are capable of being presented for registration within the time allowed by the Act and are left unregistered (y) S. 49

It has been held in some cases that where a document remains unregistered, not through any fault of the transferee of the property, but from the fraudulent conduct of the transferor, oral evidence is admissible to prove the transfer (z), but these decisions seem to be of doubtful authority (a)

Transfer valid by delivery of possession.—In the case of a sale of property of value not exceeding Rs 100 the transaction may be validly effected by delivery of possession without a deed of sale But if a deed of sale is executed it would require registration under s 54 of the Transfer of Property Act If the transaction is validly effected by delivery of possession it would not be rendered nugatory by the execution of an unregistered writing The writing in such a case does not operate as a deed to confer title but is merely evidentiary of the nature and terms of the transaction (b) The same applies to a lease for a term not exceeding one year (c) Similarly a transfer of a right of residence to a wife in consideration of her giving her consent (as required by the caste custom) to her husband marrying a second wife, is neither a sale nor a gift and can be made orally so that the transfer is not invalidated by the execution of an unregistered deed (d)

Part Performance

Part performance (e)—The equitable doctrine of part performance has received statutory recognition in sec 53A of the Transfer of Property Act and sec 27A of the Specific Relief Act Both these sections were inserted by amending Acts of 1929

The equity of part performance in England is designed to prevent the Statute of Frauds from being made an instrument of fraud The statute prevented evidence being given of any contract concerning land unless it was reduced to writing but if the contract had been partly performed by delivery of possession parole evidence was admitted of the contract in spite

(y) *Nyinakka v. Varada* (1870) 5 Mad H C 123 127

(z) *Meer Heldio Heen v Choudhry Abdool Suttar* (1868) 9 W R 551 553 *Nagappa v Devu* (1890) 14 Mad 55

(a) Cf *Tul Singh v Roshan Lal* (1924) 22 All L J 241 78 I C 265 ('24) A A 373

(b) *Sheikh Juman v Mohammad* (1917) 21 Cal W N 1149 41 I C 573

(c) *Gnanaprakasam Pillai v Ia* (1931) 66 Mad L J 293 131 I C 621, ('31) A M 352

(d) *Bai Mani v Maganlal* (1932) 34 Bom L R 1317, 140 I C 745 ('32) A B 602

(e) For an exhaustive exposition of the origin and nature of this equity the reader is referred to the notes on s 53A in Mulla's Transfer of Property Act

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(y) *Nyalka v Lina a* (1869) 5 Mad H C 123 127

(z) *Meer Helal Hee v Cho dhry Abdool Sattar* (1868) J W R 351 353 *Nagappa v Devu* (1890) 14 Mad 55

(a) *Cf Basil Singh v Roshan Lal* (1924) 22 All L J 941 78 I C 265 (24) A A 373

(b) *Sheikh Jumman v Mohammad* (1917) 21 Cal W N 1149 41 I C 79

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(e) For an exhaustive exposition of the origin and nature of this equity the reader is referred to the notes on s 53A in Mulla s Transfer of Property Act

S. 49 of the Statute of Frauds This was because it was inequitable for a party to a contract to set up a want of formality in the contract after he had allowed the other party to act upon it (*f*)

This equity had been applied in India in the case of contracts which had been acted upon by transfer of possession but which could not be proved for want of registration Thus in *Puchha Lal* v *Kunj Behari Lal* (*g*), a case decided in 1913 *A* sold land to *B* for Rs 500 Possession of the property was given to *B* but the sale deed was not registered *A* then sold the land to *C* by registered conveyance *C* sued *B* for possession of the property. Jenkins C J, treated the unregistered sale deed as evidence of a contract of sale and held that, as a suit for specific performance was not time barred, *B* s possession under the contract created an equity which protected *B* against dispossession This was the equity in *Walsh* v *Lonsdale* (*h*) applicable to provable contracts of which specific performance is not time barred In 1914 *Mahomed Musa* v *Aghore Kumar* (*i*) was decided by the Privy Council A suit to enforce a mortgage was compromised on terms by which the equity of redemption was extinguished and the properties divided between the mortgagors and the mortgagees The razinama was not registered and after it had been acted on for many years the mortgagors sued for redemption treating the razinama as invalid Lord Shaw referred to the doctrine of part performance and held that the defect in the razinama had been supplied by the actings of the parties and dismissed the suit This was the equity in *Maddison* v *Alderson* (*j*) which is applicable to a contract not admissible in evidence and is irrespective of the right of specific performance The next case of importance was that of *Sanjib Chandra* v *Santosh* (*k*) decided in 1922 The suit was for specific performance of an unregistered agreement of lease for five years which ought to have been registered as it created a present demise There was no other evidence of the contract except the lease and Rankin, C J, refused to treat the unregistered lease as evidence of a contract to lease The learned Chief Justice distinguished *Mahomed Musa*'s case on the ground that in that case there was independent evidence of the agreement which had been put before the Court in the form of a razinama

In 1929 the Legislature gave statutory recognition to the doctrine of part performance in s 27A of the Specific Relief Act and in s 53A of the Transfer of Property Act By virtue of these enactments part performance is no longer an equity but a statutory right

(*f*) *Maddison* v *Alderson* (1883) 8 App Cas 467, *Chaproniere* v *Lambert* (1917) 2 Ch. 356

(*g*) (1913) 18 Cal. W N 445, 20 I C 803

(*h*) (1889) 21 Ch. D 9

(*i*) (1914) 42 I A 1, 42 Cal 801, 28 I C 930

(*j*) (1883) 8 App Cas 467

(*k*) (1922) 49 Cal 507, 69 I C 887, (22) A C 436

S. 27A of the Specific Relief Act.—This section inserted in the Specific Relief Act by the amending Act 21 of 1929 is as follows — S. 49

'Subject to the provisions of this Chapter, where a contract to lease immoveable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithstanding that the contract though required to be registered, has not been registered sue the other for specific performance of the contract if,

(a) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part performance of the contract, and

(b) where specific performance is claimed by the lessee, he has, in part performance of the contract taken possession of the property or being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract

Provided that nothing in this section shall affect the rights of a *transferee for consideration who has no notice of the contract or of* the part performance thereof

This section applies to contracts of lease executed after the first day of April 1930

Under this section when possession has been given or taken or is held under a contract of lease either party may sue the other for specific performance of the agreement, although it has not been registered, and although it should have been registered The section implies that the unregistered writing may be used as evidence of the contract and that is expressly enacted in the proviso to s 49 of this Act These enactments therefore supersede the decision in *Sanjib Chandra* v *Santosh* (*l*)

S 53A of the Transfer of Property Act—This section was inserted in the Transfer of Property Act by the amending Act 20 of 1929 and is as follows —

'Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

(*l*) (1922) 49 Cal 507, 69 I C 887 (22) A C 436

S. 49 and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof

This section confers a right which is available only as a defence and enables a defendant to resist dispossession, if he holds under an unregistered contract or deed The section is limited to cases where the contract is in writing but is not limited to cases where the right to sue for specific performance is available Jenkins, C J, in *Puchha Lal's* case followed the equity in *Walsh* v *Lonsdale* and based his decision on the ground that the defendant still had a right to sue for specific performance But in *Venkatesh* v *Malappa* (m) Macleod, C J, allowed a defendant to resist dispossession after a suit for specific performance would have been time barred The section therefore follows *Venkatesh* v *Malappa* and goes beyond the equity in *Walsh* v *Lonsdale*

The proviso gives effect to the defence of part performance under sec 53A by allowing a writing which would otherwise be inadmissible for want of registration to be used as evidence of part performance, *i e*, to be used to prove not only the contract but also acts done in part performance of the contract

Ariff v Jadunath (n) —This case was decided by the Privy Council after the Indian Legislature had followed *Mahomed Musa's* case and enacted the amendments in the Specific Relief Act, the Transfer of Property Act, and the proviso to section 49 of the Registration Act Ariff agreed orally to grant Jadunath a permanent lease Jadunath went into possession but no lease was executed or registered Five years later Ariff refused to grant a lease and sued to evict Jadunath as a monthly tenant The High Court of Calcutta following *Mahomed Musa's* case held that Jadunath was protected by the equity of part performance and dismissed the suit The Privy Council

(m) (1922) 46 Bom 722, 66 I C 868, ('22) A. B 9

(n) (1931) 58 I.A 91, 58 Cal. 1235, 131 I C. 762 ('31) A PC 79

on appeal reversed this decision observing that the references to part performance in *Mahomed Musa's* case were merely *obiter dicta* Their Lordships held that as Jadunath had allowed his right to enforce specific performance of the agreement of lease to become time barred he could not resist eviction Their Lordships also said that as a permanent lease can only be made by registered instrument the doctrine of part performance cannot be applied so as to override the express provisions of a statute This case does not fall within the scope of sec 53A as the agreement was not in writing and the suit was of 1925 whereas sec 53A did not come into force until the 1st April 1930 The importance of the case lies however in the observation of Lord Russell of Killowen that equity cannot confer upon a person a right which the statute enacts can only be conferred by a registered instrument With reference to this criticism it must be admitted that the Statute of Frauds has a different operation to the Registration Act Under the Statute of Frauds the unwritten contract is neither void nor voidable it is only unenforceable Under the Registration Act an unregistered agreement may be invalid for want of registration The doctrine of part performance when applied to the Statute of Frauds does not validate what would otherwise be invalid, but it does have that effect when applied to the Registration Act For instance, a lessee in possession under an agreement of lease invalid for want of registration is in as strong a position as a lessee under a registered lease He cannot be dispossessed even though there is no other evidence of the agreement than the unregistered demise and even though a suit for specific performance is barred The Legislature in applying the doctrine of part performance to the Registration Act has undoubtedly sanctioned what Sir George Lowndes in *Skinner* v *Skinner* (o) called an evasion of the Act S. 49

MISCELLANEOUS

Fraud —See notes to sec 25, "Document remaining unregistered owing to fraud of executant, on p 127 above

Loss or destruction of document before registration.—Where a deed of transfer, *e g*, a deed of sale of immoveable property for more than Rs 100 is lost or destroyed within the time allowed for the registration thereof, the purchaser may bring a suit against the vendor to compel the execution and registration of a fresh deed And if, after the execution of the lost deed, the vendor sells the property by a registered deed and delivers possession thereof to another who has notice of the sale to the first purchaser, the latter is entitled, as against the subsequent purchaser, to a decree for possession of the property (p) See notes, "Oral evidence," on p 189 above.

(o) (1929) 56 I.A. 363 33 Cal W N 1150, 119 I C 633 ('29) A PC 269

(p) *Mallappa* v *Ramalingachi* (1897) 20 Mad. 250 [loss], *Nynakka* v *Vavana* (1869) 5 Mad H. C 123 [destruction]

Ss. 49, 50

Unregistered document to contradict witness—*A document* which requires registration, but is not registered cannot be received in evidence even for the purpose of contradicting a witness that he had previously made a statement inconsistent with his deposition *A* and *B* execute a deed of partition The deed requires registration but is not registered *A* sues *B* on the deed *B* deposes that he had never made a statement admitting *A*'s right to the property claimed The deed is not admissible in evidence even for the purpose of contradicting *B* otherwise the deed might be got in by the simple device of asking a question about the same matter (*q*)

Unregistered lease and suit for rent—See notes, "Oral evidence," on p 189 above

Registration prevented by fraud of executing party—See notes "Oral evidence," on p 189 above

CL (b)—"CONFER ANY POWER TO ADOPT."

"Confer any power to adopt"—A document which requires to be registered in order to confer a power to adopt may though unregistered, be used for a collateral purpose which does not require registration (*r*) See sec 17 (3) above

Certain registered documents relating to land to take effect against unregistered documents

50. (1) Every document of the kinds mentioned in clauses (a) (b) (c) and (d) of section 17 sub section (1) and clauses (a) and (b) of section 18, shall if duly registered take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order whether such unregistered document be of the same nature as the registered document or not

(2) Nothing in sub section (1) applies to leases exempted under the proviso to sub section (1) of section 17 or to any document mentioned in sub section (2) of the same section, or to any registered document which had not priority under the law in force at the commencement of this Act

Explanation—In cases where Act No XVI of 1864 or the Indian Registration Act, 1866, was in force in the place and at the time in and at which such unregistered document was executed, "unregistered" means not registered according

(*q*) *Sakharam* v *Madan Krishnaji* (1881) 5 Bom 232 236

(*r*) *Bachoo* v *Khushaldas* (1902) 4 Bom L R 883

to such Act and, where the document is executed after the first day of July, 1871, not registered under the Indian Registration Act 1871 or the Indian Registration Act, 1877, or this Act S. 50

The commentary on this section is divided under the following main heads indicated in large italics

1 Earlier enactments
2 Priority of registered over unregistered documents
3 Notice of prior unregistered document
4 Whether possession is equivalent to notice
5 Fraud as affecting priority
6 Subsequent registered document obtained *pendente lite*
7 Whether registration is notice
8 Failure of consideration

Earlier Enactments

Corresponding sections of the earlier Acts See sec 50 of Act 3 of 1877, Act 8 of 1871 and Act 20 of 1866 and sec 68 of Act 16 of 1864 See also sec 6 of Bombay Regulation 4 of 1802, Madras Regulation 17 of 1802 and Bengal Regulation 36 of 1793, also sec 6 of Bombay Regulation 9 of 1827 also Act 1 of 1843 and Act 19 of 1843 All these sections are set forth below

Bombay Regulation 4 of 1802, Madras Regulation 17 of 1802 and Bengal Regulation 36 of 1793, sec. 6 —Sec 6 of the Bombay Regulations which is in almost the same terms as sec 6 of the Madras and Bengal Regulations ran as follows —

First Every deed of sale or gift of the description specified in Clause 2nd Section III that may be executed on or after the ' (dates given in Section IV, for the respective Presidencies) " and a memorial of which shall be duly registered according to this Regulation, shall, provided its authenticity be established to the satisfaction of the Court, invalidate any other deed of sale or gift for the same property, executed subsequent to the said date which may not have been registered, and whether such second or other deed shall have been executed prior or subsequent to the registered deed "

' *Second* —Every deed of mortgage, of the description specified in Clause 3rd, Section III, that shall have been or shall be registered, in pursuance of the requisition in Section XIV, (Bombay) Regulation 1, 1800" (in Bengal according to Bengal Regulation XXXVI of 1793, Section III, and executed on and after the 1st January 1796 , in Madras after the 1st January

S. 50 1805), "and provided its authenticity be established to the satisfaction of the Court, shall be satisfied in preference to any other mortgage on the same property executed subsequent to the said date, which may not have been registered, and whether such second or other mortgage shall have been executed prior or subsequent to the registered mortgage"

'*Third* —It being the object, however, of the rules in the two preceding clauses, to prevent persons being defrauded by purchasing, or receiving in gift, or taking in mortgage, real property which may have been before sold given, or mortgaged, and as persons can never suffer such imposition when they are apprised of the previous transfer or mortgage of the property, it is to be understood that if any person shall purchase, receive in gift, or take in mortgage, any real property, knowing such property to have been previously sold, given or mortgaged to any other person, and that the deed of sale, gift, or mortgage, has not been registered, and shall register his own deed, in such case the deed of sale gift or mortgage of such subsequent purchaser, donee or mortgagee which may have been registered, shall not, from the registry of it invalidate, or be discharged in preference to the unregistered deed of sale gift or mortgage, first executed, provided the authenticity of the latter be established to the satisfaction of the Court"

Bombay Regulation 9 of 1827, sec 6 (1)—Sec 6 (1) of Bombay Regulation 9 of 1827 ran as follows —

Every deed or other writing transferring or mortgaging immoveable property situated within the zillah, if registered in the register of title deeds, shall, without regard to the date of execution, if proved to be valid be preferred to and satisfied before any deed of the nature of those specified in section III, Clause First, either subsequently registered or not registered at all, but the preference shall extend only to the immoveable property thereby transferred or mortgaged, provided, however, that if any person shall purchase, receive in gift, or take in mortgage immoveable property, *knowing* such property to have been previously sold, given, or mortgaged to any other person, and that the deed of sale, gift, or mortgage has not been registered, and shall register his own deed, in such a case the registered deed shall not, from the registry of it, be entitled to preference over the unregistered deed, if proved to be authentic"

Act 1 *of* 1843 —The following is the text of Act 1 of 1843 —

"Whereas the Registry Laws *now in force in the respective Mofussils of Bengal, Madras and Bombay,* provide that registered conveyances and other instruments affecting Titles to land and other interests therein shall not take precedence of unregistered conveyances and instruments in cases where the party registering shall have known of the existence of such unregistered conveyances or other instruments And whereas a complicated

system of law has arisen out of the construction which is to be given to the provisions regarding the knowledge of parties or notice had by them in such cases. And whereas much perjury has been committed in investigations touching the fact of such notice or knowledge and much of the time of the Courts has been occupied with such investigations. And whereas, in consequence of forgeries, perjuries fraudulent concealments and other practices, *no person purchasing or advancing money on the Security of Land can safely* rely on the conveyances or other instruments affecting the title to such land or other interest therein affording by means of their being registered, a Security against conveyances or instruments being set up, as of previous date, by unregistered claimants. S. 50

It is hereby enacted that *all provisions* contained in any Regulation or Regulations of the Bengal Madras or Bombay Codes, *touching such knowledge or notice* as aforesaid or previous unregistered conveyances, or instruments affecting titles to land or other interests therein *shall be repealed* from the first day of May next and every conveyance or other instrument affecting title to land or any interest in the same authorized by those Codes respectively, to be registered shall so far as regards any lands to which the same relate, be void as against any person claiming under any subsequent conveyance or other instrument duly registered unless the prior conveyance or instrument shall have been duly registered before the registration of the subsequent conveyance or instrument *any alleged notice or knowledge of such prior conveyance or instrument notwithstanding*. Provided always that this Act shall not be construed to extend to any conveyance or other instrument made before the first day of May next."

See notes under the main head, 'History of the section' on p 202 below

Act 19 of 1843. Secs 1 and 2 of the Act ran as follows —

"Whereas doubts have arisen as to the true meaning and construction of Act No 1 of 1843

1. It is hereby enacted, that the said Act is repealed, except in so far as it repeals all provisions contained in any Regulation or Regulations of the Bengal Madras, or Bombay Codes, touching the knowledge or notice had by parties to registered conveyances and other instruments affecting titles to land and other interests therein, of the existence of unregistered conveyances or other instruments affecting such titles or other interests therein

2. And it is hereby enacted, that from the first day of May last past, *every deed of sale or gift* of lands, houses or other real property, a memorial of which has been or shall be duly registered according to law, shall, provided its authenticity be established to the satisfaction of the Court, invalidate any other deed of sale or gift for the same property which may not have

S. 50 been registered and whether such second or other deed shall have been executed prior or subsequent to the registered deed—and that from the said day *every deed of mortgage* on land, houses and other real property as well as *certificates of the discharge of such incumbrances, a* memorial of which has been or shall be duly registered according to law, and provided its authenticity be established to the satisfaction of the Court, shall be satisfied in preference to any other mortgage on the same property which may not have been registered and whether such second or other mortgage shall have been executed prior or subsequent to the registered mortgage, *any knowledge or notice of any such unregistered deed or certificate alleged to be had by any party to such registered deed or certificate notwithstanding* Provided always that nothing in this section contained shall be construed to extend to any deed or certificate made before the said first day of May last past"

See notes under the main head History of the section," on p 202 below

Act 16 *of* 1864, *sec* 68—Sec 68 of Act 1864 ran as follows —

Every instrument of the descriptions mentioned in clauses (1) and (2) of section 16 shall if duly registered, have priority to any other instrument relating to the same property, whether such other instrument be of the same nature as the registered instrument or not '

See notes under the main head, History of the section on p 202 below

Act 20 *of* 1866 *sec* 50—Sec 50 of Act 20 of 1866 ran as follows —

'Every instrument of the kinds mentioned in clauses (1), (2) and (3) of section 18, shall if duly registered, take effect, as regards the property comprised therein, against every unregistered instrument relating to the same property, whether such other instrument be of the same nature as the registered instrument or not

See notes under the main head, "History of the section," on p 202 below

Act 8 *of* 1871, *sec* 50—Sec 50 of Act 8 of 1871 ran as follows —

"Every document of the kinds mentioned in clauses (1) and (2) of section 18, shall if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not

Explanation—In cases where Act No XVI of 1864, or Act No XX of 1866 was in force in the place and at the time, in and at which such unregistered document was executed, 'unregistered' means not registered according

to such Act, and where the document is executed after the first day of July 1871 not registered under this Act

See notes under the main head "History of the section" on p 202 below

Act 3 of 1877 sec 50 Sec 50 of Act 3 of 1877 ran as follows —

"Every document of the kinds mentioned in clauses (a) (b) (c) and (d) of section 17 and clauses (a) and (b) of sec 18 shall if duly registered take effect as regards the property comprised therein against every unregistered document relating to the same property and not being a decree or order whether such unregistered document be of the same nature as the registered document or not

Registered documents relating to land of which registration is optional to take effect against unregistered documents

Nothing in the former part of this section applies to leases exempted under the proviso in section 17 or to the documents mentioned in clauses (e) (f) (ff) (g) (h) (i) (j) (k) and (l) of the same section

Explanation In cases where Act No XVI of 1864 or Act No XX of 1866 was in force in the place and at the time in and at which such unregistered document was executed unregistered means not registered according to such Act and where the document is executed after the first day of July 1871 not registered under Act No VIII of 1871 or this Act

See notes under the main head History of the section on p 202 below

Alterations in the present section—This section corresponds with sec 50 of Act 3 of 1877 except in the following particulars

The words Nothing in sub section (1) have been substituted for the words Nothing in the former part of this section which occurred in the second paragraph of sec 50 of Act 3 of 1877 They give effect to a decision of the Madras High Court where it was held that the words in the former part of this section referred to *the whole of the first paragraph* of sec 50 of Act 3 of 1877 which corresponds with sub sec (1) of the present section (s)

The words in sub sec (2) of the present section or to any registered document which had not priority under the law in force at the commencement of this Act are new See notes under the head Where both documents are executed while Act 16 of 1864 Act 20 of 1866 and Act 8 of 1871 were in force sub head Duly registered on p 214 below

The words ' or the Indian Registration Act, 1877, have been added in the Explanation to make the Explanation complete

(s) *Kadar v Ismail* (1886) 9 Mad 119

History of the section

S. 50 It is clear from the provisions of sec 47 of the Act, that where there are two documents *both* of which are registered, the one *executed* first in point of time has priority over the other The date of registration is immaterial The present section provides for priority between documents *one* of which is registered and the other is not To understand the provisions of the present section it is absolutely necessary to have a clear idea of what the law was under the earlier enactments We propose to state in the following paragraphs what that law was (t)

Regulations —The first Act which provided for registration in British India was Act 16 of 1864 That Act came into force on January 1, 1865 Before that enactment provision was made for registration of documents by *local* Rules and Regulations in different parts of British India (see p 197 above) It is sufficient for our present purposes to note the provisions of the following Regulations namely —

(1) Bengal Regulation 36 of 1793,

(2) Madras Regulation 17 of 1802,

(3) Bombay Regulation 4 of 1802 and

(4) Bombay Regulation 9 of 1827

The following provisions were common to the *first three* Regulations —

(1) The Registrar was authorized and required to register the memorials of (1) deeds of sale or gift of immoveable property, (2) deeds of mortgage of such property and certificates of the discharge of such mortgages, (3) leases of immoveable property, (4) wills, and (5) written authorities to adopt

(2) Registration of the aforesaid documents was optional There was no provision for compulsory registration

(3) A deed of sale, if registered, had priority over an unregistered deed of sale relating to the same property Similarly a deed of gift, if registered, prevailed over an unregistered deed of gift Likewise a deed of mortgage, if registered, had priority over an unregistered deed of mortgage But a registered deed of *sale* had no priority over an unregistered deed of *gift* In other words a registered deed took effect against an unregistered deed, if the latter was *of the same nature* as the former

(4) But if any person purchased, received in gift, or took in mortgage, any immoveable property, *knowing* such property to have been previously sold, given or mortgaged to any other person and that the deed in favour of

(t) For a history of the earlier law, see *Balaram v Appa* (18"2) 9 Bom H C 121, at pp 124 133.

that person had not been registered, and should register his own deed, the subsequent deed, though registered, had no priority over the unregistered deed In other words the Regulations fully recognized the doctrine of notice S. 50

(5) In no case was a registered document entitled to priority over an unregistered document, unless its *authenticity* was proved to the satisfaction of the Court

So far as these provisions affected Bengal and Madras, they continued unaltered until 1843

The Bombay Regulation 4 of 1802 was repealed by Regulation 1 of 1827, and Bombay Regulation 9 of 1827 was substituted for it Regulation 9 of 1827 introduced an important change in the law Under that enactment a registered document was entitled to priority over an unregistered document even if the unregistered document was *not of the same nature* as the registered document Thus a registered deed of *sale* had priority under that enactment over an unregistered deed of *gift* or *mortgage* relating to the same property But the provision as to *notice*, which occurred in Regulation 4 of 1802, was retained intact in the new Regulation

Acts 1 *of* 1843 *and* 19 *of* 1843 — An important change was made in the law in 1843 Under the Regulations a registered document had no priority over an unregistered document, if the holder of the former had notice of the latter This led to forgery and perjury What happened was that *A* would sell his house to *B*, receive the purchase money from him, and execute a deed of sale to him which would be registered *A* would then if dishonestly inclined, collude with a third person X, and in collusion with him fabricate a deed of sale of a prior date in favour of *X*, leaving it unregistered and then create false evidence to prove (1) that the sale deed to X was prior to the deed to *B*, and (2) that *B* had notice of the unregistered deed to *X* If *A* succeeded in proving the above facts, *B* would lose his priority To put a stop to this evil, the provision as to notice contained in the Regulations was repealed by Act 1 of 1843 (see p 198 above) and it was provided that a registered document relating to immoveable property shall have priority over an unregistered document relating to the same property, *notwithstanding any notice which the holder of the subsequent registered document might have of the prior unregistered document*

That Act, except so far as it repealed the provisions in the Regulations as to notice or knowledge of unregistered documents, was itself repealed by Act 19 of 1843 (see p 199 above) By sec 2 of Act 19 of 1843 it was enacted that a deed of sale relating to immoveable property, if registered, should have priority over an unregistered deed of sale, provided its authenticity

S. 50 was established to the satisfaction of the Court (*u*), notwithstanding any knowledge or notice which the holder of the subsequent registered deed might have of the prior unregistered deed. The section contained similar provisions as regards deeds of gift, deeds of mortgage and certificates of the discharge of mortgages. The section did not mention leases, hence it was held that a registered lease had no priority under the Act over a prior unregistered lease (*v*).

It will be seen from what has been stated above that the combined effect of Acts 1 and 19 of 1843 was—

(a) to do away with the provisions about *notice* contained in the Regulations, and

(b) to leave intact the provision about *priority* contained in the first three Regulations, so that a registered document had no priority, over an unregistered document, unless the unregistered document was *of the same nature* as the registered document.

But though under Act 19 of 1843 a holder of a subsequent registered instrument did not lose his priority over the holder of a prior unregistered document by reason of his knowledge or notice of the unregistered document, he was not entitled to priority if the holder of the prior unregistered document was *in possession* of the property at the date when he (the holder of the subsequent document) obtained his document (*w*).

On comparing the provisions of Act 19 of 1843 with those of the Registration Act 16 of 1864 and the subsequent Acts, it will be observed—

(1) that neither Act 16 of 1864 nor any of the subsequent Acts contains any provision about *notice*, and

(2) that priority is given to a registered over an unregistered document, whether the unregistered document be of the same nature as the registered document or not.

We next proceed to consider the provisions of the Registration Act 16 of 1864 and of the subsequent Acts as regards priority.

Acts 16 of 1864, 20 of 1866 and 8 of 1871.—The Regulations and Acts mentioned above were repealed by the Registration Act 16 of 1864 [see sec. 1 of the Act]. Under the Regulations there was no document which was compulsorily registrable. Act 16 of 1864 for the first time introduced the system of compulsory registration in British India. In that Act we find for the first time a division of documents into those which are compulsorily

(*u*) See *Sreenath v. Ram Comul* (1865) 10 M. I. A. 220, 3 W. R. P. C. 43.

(*v*) *Anund Chunder v. Chundernath* (1866) 5 W. R. 205.

(*w*) *Syud v. Syud* (1865) 4 W. R. 30; *Mt. Butoolun v. Mt. Oomeerun* (1867) 8 W. R. 300; *Balaram v. Appa* (1872) 9 Bom. H. C. 121, 138.

registrable and those which are registrable optionally The same scheme was maintained in the later Acts and it is maintained also in the present Act S. 50

But though the Acts of 1864 1866 and 1871 rendered the registration of certain documents compulsory, they did not confer priority on *all* registered documents over unregistered documents The priority was conferred upon certain registered documents only namely

(1) under Act 16 of 1864 sec 68 (see p 200 above), to documents *optionally* registrable under cls 1 and 2 of sec 16 of that Act [see p 106 above]

(2) under Act 20 of 1866 sec 50 (see p 200 above) to documents *optionally* registrable under cls 1 2 and 3 of sec 18 of that Act [see p 106 above] and

(3) under Act 8 of 1871 sec 50 (see p 200 above) to documents *optionally* registrable under cls 1 and 2 of sec 18 of that Act [see p 107 above]

A document *compulsorily* registrable under those Acts, though registered, had no priority over an unregistered document This may be explained by the following illustrations

Illustrations

(1) In 1874 *A* executes a deed of sale of his house to *B* for Rs 99 The deed, though *optionally* registrable, is registered In 1875 *A* sells the same property to *C*, and executes a sale deed to him The deed to *C* is not registered *B*s sale deed, being a document of the kind mentioned in cl (1) of sec 18 of Act 8 of 1871, and being *optionally* registrable, is entitled to priority under sec 50 of that Act over the sale deed to *C*

(2) In 1874, *A* executes a deed of sale of his house to *B* for Rs 50 The deed is *optionally* registrable under sec 18, cl 1, of Act 8 of 1871, and it is not registered In 1875 *A* executes a sale deed of the same property to *C* for Rs 101 The deed to *C* is compulsorily registrable under sec 17 of that Act, and it is registered Is the sale deed to *C* entitled to priority under sec 50 of the Act over the sale deed to *B*? No, because the sale deed to *C* is a document *compulsorily* registrable under sec 17 of the Act, and a document which is *compulsorily* registrable is not entitled to priority under that Act over an unregistered document

The law being such as stated in ill (2) above, there was nothing to prevent *A*, the vendor, from first executing a registered sale deed to *C* for Rs 101, and then fabricating an unregistered sale deed in favour of *B* for Rs 50, and antedating it, so as to defeat *C*s prior deed The deed to *B*, being for Rs 50, did not require registration, and it might be set up against

S. 50 *C* as a deed of a prior date To remedy this evil a change was effected in the law by providing in sec 50 of the Registration Act 3 of 1877, that not only a registered document optionally registrable, but a registered document *compulsorily* registrable, shall have priority over an unregistered document Under the law as so altered, in a case such as that put in ill (2) above, *C* s deed would be entitled to priority over *B* s We proceed to note the precise change made by the Act of 1877

Act 3 *of* 1877 —The first Registration Act which gave priority to registered documents *compulsorily* registrable over unregistered documents was Act 3 of 1877 By sec 50 of that Act (see p 201 above) it was provided that ' *every document of the kinds mentioned in cls* (*a*), (*b*), (*c*) *and* (*d*) *of sec* 17 *and clauses* (*a*) *and* (*b*) *of sec* 18, shall if duly registered, take effect as regards the property comprised therein against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not" But this did not apply to leases exempted under the proviso to sec 17 [now proviso to sub-sec (1) of sec 17] or to documents mentioned in cls (e) to (o) of that section [now sub sec (2) of sec 17] These provisions have been reproduced in sec 50 of the present Act The reasons for the change introduced by sec 50 of the Act of 1877 were thus stated in the Statement of Objects and Reasons appended to the Bill which was eventually passed into law as Act 3 of 1877 —

' That section [that is, sec 50 of Act 8 of 1871] now provides that registered documents relating to land, of which registration is *optional*, shall take effect against unregistered documents But it makes no such provision as to documents of which the registration is compulsory and which have accordingly been registered The result is that although a registered deed creating a right of the value of Rs 99 to land cannot be defeated by an unregistered deed, a registered deed creating a similar right worth Rs 101 may be defeated by an antedated unregistered deed creating a right worth anything under Rs 100 The mischief feared is an extensive fabrication of falsely dated deeds purporting to create rights of small value in order to defeat deeds creating rights of large value The remedy which the Bill proposes is to make documents registered under section 17 take effect against unregistered documents" [See notes, "Acts 16 of 1864, 20 of 1866 and 8 of 1871,' on p 204 above]

The table on the next page gives the date on which each Act came into force, and sections—

(a) relating to compulsory registration,

(b) relating to optional registration,

(c) relating to priority of registered over unregistered documents, and

(d) specifying documents entitled to priority

Comparative Table of sections relating to priority.

Acts and dates on which they came into force.	*Documents compulsorily registrable.*	*Documents optionally registrable*	*Sections providing for priority*	*Documents entitled to priority*
Act 16 of 1864— 1st January 1865	s. 13 (p 25)	s 16 (p 106)	s 68 (p [illegible])	s 16 cls (1) & (2)†
Act 20 of 1866— 1st May 1866	s. 17 (p 26)	s 18 (p 106)	s [illegible]0 (p [illegible])	s 18 cls (1) (2) & (3) †
Act 8 of 1871— 1st July 1871	s 17 (p 27)	s 18 (p 107)	s [illegible]0 (p 200)	s 19 cls (1) & (2) †
Act 3 of 1877— 1st April 1877	s 17 (p 28)	s 18 (p 107)	s 50 (p 201)	s 17, cls (a), (b), (c) & (d) ‡ s 18, cls. (a) & (b) †
Act 16 of 1908— 1st January 1909	s 17 (p 23)	s 18 (p 105)	s. 50 (p 196)	s 17, cls. (a), (b), (c) & (d) ‡ s 18, cls (a) & (b)†

† Optionally registrable.

‡ Compulsorily registrable.

S. 50

Analysis of the Section.

Scope of the section.—Under this section a registered document is entitled to priority over an unregistered document—

(1) if it is of the kind mentioned in cls (a), (b), (c), or (d) of sec 17 (1) [compulsorily registrable] or the kind mentioned in cl (a) or (b) of sec 18 [optionally registrable]

(2) if it has been duly registered [see notes under the same heading, on p 214 below]

(3) if it covers the same property as that covered by the unregistered document (x)

But an unregistered *decree or order* is not liable to be postponed to a registered document See notes "Not being a decree or order," on p 220 below

It is not necessary for the operation of this section—

(a) that the rival deeds should have been executed by the same person [see notes "Rival deeds need not be executed by the same person," on p 218 below] or

(b) that the unregistered document should be of the same nature as the registered document See notes "Whether such unregistered document be of the same nature as the registered document or not" on p 222 below

Sub-section (1).—This sub-section is dealt with in the notes on pp 208-222

"Shall take effect".—See notes, "Section does not invalidate unregistered documents that are optionally registrable," on p 218 below

"Duly registered".—*See notes under the same heading, on p 214 below*

"Every unregistered document".—See notes under the same heading on p 220 below

"Relating to the same property".—See notes, "Rival deeds must be antagonistic," on p 219 below

"Not being a decree or order".—See notes under the same heading, on p 220 below

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(x) *Gangaran* v *Kalipodo* (1885) 11 Cal 661, 668

"Whether such unregistered document be of the same nature as the registered document or not"—See notes under the same heading on p 222 below. S. 50

"Any document mentioned in sub-sec (2) of section 17"—It is enacted by sub-sec (2) of the present section that the provisions of sub-sec (1) as to priority shall not apply to any document mentioned in sub-sec (2) of sec 17. Sec 50 of the Act of 1877 contained a similar provision. A certificate of sale is one of the documents mentioned in sub-sec (2) of sec 17 [see cl. (xii) of that sub-section and cl. (o) of sec 17 of the Act of 1877]. Therefore nothing contained in sub-sec (1) of the present section applies to a certificate of sale. Hence a certificate of sale though registered is not entitled to priority over an unregistered document.

Certificates of sale were exempted from registration for the first time by Act 7 of 1888 by inserting cl. (o) in sec 17 of the Act of 1877. At the same time sec 50 of that Act was amended by including cl. (o) in the second paragraph of that section which corresponds with sub-sec (2) of the present section. Before the amendment there was a conflict of opinion whether a certificate of sale required registration and whether sec 50 of the Act of 1877 and of the earlier Acts applied to such certificates (y). Since the amendment it is clear that sec 50 does not apply to certificates of sales. See notes "Certificate of sale" on p 102 above.

"Or to any registered document which had not priority under the law in force at the commencement of this Act"—Before the amending Act 21 of 1929 awards were documents under sec 17 (2) and within the exception made by sec 50 (2). A registered mortgage of the 21st March 1925 was therefore held not to have priority over an unregistered award of the 20th March 1925 creating a charge over the same property (z).

See note "Where both documents are executed while Act 16 of 1864, Act 20 of 1866 and Act 8 of 1871 were in force" on p 213 below.

Explanation to the section—This section provides that every document of the kind mentioned in cls (a), (b), (c) and (d) of sec 17, and cls (a) and (b) of sec 18, shall, if duly registered, take effect as regards the property comprised therein against every *unregistered* document relating to the same property, and not being a decree or order

(y) See *Fakirchand* v. *Kahandas* (1866) 3 Bom H C A C 167 [not entitled to priority—Act 19 of 1843 and Bombay Reg 9 of 1827]; *Narasayya* v. *Jungam* (1884) 7 Mad 418 [not entitled to priority—Act 3 of 1877]; *Ramaraju* v. *Arunachala* (1884) 7 Mad 248, 252 [entitled to priority].

(z) *Pohlumal* v. *Naraindas* (1933) 143 I C 863 (33) A S 151 F B.

S 50 The Explanation appended to the section explains what is meant by ' unregistered It may be split into two parts as follows —

(1) in cases where Act 16 of 1864 or Act 20 of 1866 was in force *in the place and at the time* in and at which the unregistered document was executed, unregistered means not registered according to such Act and,

(2) in cases where the unregistered document is executed after the 1st day of July, 1871 [being the date on which the Registration Act 8 of 1871 came into force] unregistered' means not registered under the Act of 1871 or the Act of 1877

It will be observed that the words in the place and at the time" are used in connection only with the Acts of 1864 and 1866 Two conditions, therefore must be satisfied to postpone an unregistered document executed while Act 16 of 1864 and Act 20 of 1866 were in force to a registered document The one is that the property to which such document relates must be *situate in a place* in which Act 16 of 1864 or Act 20 of 1866 was in force, as the case may be The other is that the document itself should be one executed *at the time* at which Act 16 of 1864 or Act 20 of 1866 was in force, as the case may be (*a*) The reason why the words in the place and at the time are used in connection only with Act 16 of 1864 and Act 20 of 1866 seems to be that while the Acts of 1871 and 1877 and the present Act, extended *to the whole of British India except* such districts as the Local Government might with the sanction of the Governor General in Council exclude from their operation the operation of Act 16 of 1864 was confined in the first instance to the Presidencies of Bengal Madras and Bombay, with power to Government to extend it to other parts of British India [sec 71], and the operation of Act 20 of 1866 was confined in the first instance to such parts of British India in which Act 16 of 1864 was in force on the first day of May 1866 with a similar power Pursuant to that power, the Acts of 1864 and 1866 were extended to different *places* in British India at different *times*, and hence the limitation in the Explanation as to *place* and *time* as regards the Acts of 1864 and 1866

See notes under the heading History of the section on p 202 above

Priority of Registered over Unregistered Documents.

Competition between registered and unregistered documents — The question of the priority of a registered over an unregistered document may be considered under the following five heads according to the dates of execution of the documents namely,—

I Where both documents are executed before the Registration Act 16 of 1864 came into force, that is before January, 1, 1865

(*a*) See *Dhan Mal* v *Ganga Ram* (1893) Punj Rec No. 95 per Rivaz, J

II. Where one of the documents is executed before Act 16 of 1864 came into operation, that is January 1, 1865, and the other after that date. S. 50

III. Where both documents are executed while Act 16 of 1864, Act 20 of 1866 and Act 8 of 1871 were in force.

IV. Where one of the documents is executed before Act 3 of 1877 came into force, that is, April 1, 1877, and the other after that date.

V. Where both documents are executed after Act 3 of 1877 came into force.

I. Where both documents are executed before the Registration Act 16 of 1864 came into force, that is, January 1, 1865.—The question of priority of a registered over an unregistered document, in cases where both the documents were executed before January 1, 1865, would be governed by the provisions of the Regulations mentioned above and of Acts 1 and 19 of 1843. This subject has been dealt with fully in the notes under the head 'History of the section,' sub-head 'Regulations,' on p. 202 above. Suffice it to say that registration under those enactments was *optional*, and a registered document was entitled to priority over an unregistered document relating to the same property, unless the holder of the registered document had notice of the prior unregistered document. Further, except in cases governed by Bombay Regulation 9 of 1827, it was necessary that the unregistered document should be of the same nature as the registered document; if it was not so, there was no priority (*b*).

Illustration

In 1863 *A* executes a mortgage of his immoveable property to *B*. The mortgage deed is registered in September 1864. In May, 1864, *A* executes another mortgage of the same property to *C*. This mortgage is not registered. *B*'s mortgage, being registered, is entitled to priority over *C*'s mortgage, though it was registered after the date of *C*'s mortgage. *Trikam* v. *Harji* (1894) 18 Bom. 332.

II. Where one of the documents is executed before Act 16 of 1864 came into operation, that is, before January 1, 1865, and the other after that date.—An unregistered document executed before January 1, 1865, the date on which Act 16 of 1864 came into operation, is not liable to be postponed to a document executed and registered after that Act came into operation, that is, while Act 16 of 1864 was in

(*b*) *Maleshappa* v. *Bassappa* (1863) 1 Bom. H. C. 10; *Harnamgir* v. *Spiers* (1864) 2 Bom. H. C. 204; *Trikam* v. *Harji* (1894) 18 Bom. 332.

S. 50 force (c), or Act 20 of 1866 was in force (d), or Act 8 of 1871 was in force (e) or Act 3 of 1877 was in force (f), or executed and registered after the present Act came into force The grounds on which this conclusion is based are (1) that there was no system of compulsory registration before Act 16 of 1864 when the unregistered document was executed, and (2) that there is nothing in the language of sec 68 of Act 16 of 1864 and sec 50 of the subsequent Acts to entitle a document executed and registered after January 1 1865 to priority over an unregistered document executed before that date (g) It does not make any difference that the registered document was one *compulsorily* registrable under Act 16 of 1864 or any of the subsequent Acts The holder of such a document cannot claim priority even under sec 50 of the Registration Act 3 of 1877 or of the present Act, for though these sections give priority to a registered document *compulsorily* registrable over an unregistered document, one of the conditions for the application of that section is that the unregistered document must be one executed on or after January 1, 1865, as appears from the Explanation to the section (h), and not one executed before that date See notes, Explanation to the section, on p 209 above

Illustrations

(1) In 1862 *A* executes a deed of sale of a mango garden to *B* The deed is not registered In 1867 *A* executes another deed of sale of the same garden to *C* This deed is registered *B*s deed having been executed before Act 16 of 1864 came into force, *C*s deed though registered, is not

(c) *Chuterdharee* v *Nursingh Dutt* (1868) N W P 371

(d) *Doolal Bibee* v *Nada Shaha* (1870) 13 W R 446, *Imrit Singh* v *Koylashoo* (1869) 11 W R 559, *Girja Singh* v *Greedharee Singh* (1868) 10 W R. 65 [title completed by possession] *Sreemutty Fyezoonnissa* v *Moulvie Salatoollah* (1874) 22 W R 3 [title completed by possession], *Khandu* v *Tarachand* (1877) 1 Bom 574 [though the point was left open, the result must be the same even if both the documents were executed for a consideration less than Rs 100], *Parmaya* v *Sondi* (1880) 4 Bom 459, *Kishori Lal* v *Sham Karan* (1884) 4 All W N 184, *Ven latanarsammah* v *Ramiah* (1879) 2 Mad 108 The decision to the contrary in *Soodha Ram* v *Obhoy Chunder* (1873) 19 W R 279 is not good law

(e) *Chattar Singh* v *Ram Lal* (1881) 3 All 488, *Ram Baran* v *Murli* (1881) 3 All. 505, *Timmu* v *Devu Rai* (1882) 5 Mad 265

(f) *Tirumala* v *Lakshmi* (1881) 2 Mad 147, *Desai Lallubhai* v *Mundas* (1896) 20 Bom 390, *Hargovind* v *Kishan* (1906) 28 All 607, *Dhan Mal* v *Ganga Ram* (1893) Punj Rec No 95

(g) *Doolal Bibee* v *Nada Shaha* (1870) 13 W R 446 447, *Khandu* v *Tarachand* (1877) 1 Bom 574, 575, *Hargovind* v *Kishan* (1906) 28 All. 607, 608

(h) *Tirumala* v *Lakshmi* (1881) 2 Mad 147, *Dhan Mal* v *Ganga Ram* (1893) Punj Rec No 95

entitled to priority over B's lease. Lalit Singh v. Koylashoo Koer (1869) 11 W. R. [illegible] S. 50

(2) In 1864 A executes a lease for twenty years to *B*. The lease is not registered. In 187[illegible] A executes a deed of sale of the same property to C. This deed is registered under the Registration Act 3 of 1877. C's deed is not entitled to priority over B's lease. *Tirumala v. Lakshmi* (1880) 2 Mad. 147.

III. Where both documents are executed while Act 16 of 1864, Act 20 of 1866, and Act 8 of 1871 were in force. We next proceed to consider the case where both documents were executed while Acts 16 of 1864, 20 of 1866 and 8 of 1871 were in force, that is, between January 1, 1865, and March 31, 1877. Under sec. 50 of Act 3 of 1877 and of this Act, every document *compulsorily* registrable under sec. 17, cls. (a), (b), (c) and (d), as well as every document *optionally* registrable under cls. (a) and (b) of sec. 18, is, if duly registered, entitled to priority over an unregistered document relating to the same property. But under Act 16 of 1864 [sec. 68] and Acts 20 of 1866 and 8 of 1871, there was no priority for a registered over an unregistered document, unless the registered document was *optionally* registrable [see p. 200 above]. Under those Acts it was only a registered document *optionally* registrable that was entitled to priority over an unregistered document. A registered document *compulsorily* registrable had no priority under those Acts over an unregistered document. The result is that if two documents relating to the same property were executed while Act 16 of 1864 was in force, and one of them being *optionally* registrable is registered and the other is not, the former is entitled under sec. 68 of the Act to priority over the latter (i). The result would be the same if both the documents were executed while Act 20 of 1866 (j) or Act 8 of 1871 was in force, or one executed while Act 16 of 1864 was in force and the other while Act 20 of 1866 was in force (k). And by virtue of the Explanation to sec. 50 of Act 8 of 1871 [see p. 200 above], a document *optionally* registrable, and executed and registered while Act 8 of 1871 was in force, is entitled to priority over an unregistered document executed while Act 16 of 1864 or Act 20 of 1866 was in force, provided the property to which the documents relate is situated in a place where those Acts were in force. But if the registered document was *compulsorily* registrable, it had no priority under any of the said three Acts over a document that was *optionally* registrable, but not registered (l).

(i) *Gobind Chunder v. Poorno Chunder* (1868) 10 W. R. 36.

(j) *Lanka v. Fatta* (1875) 12 Bom. H. C. 171; *Venkayya v. Kotiyya* (1883) 6 Mad. 153.

(k) *Ali Azim Khan v. Islim Khan* (1870) 14 W. R. 483.

(l) *Shaikh Pyasutulla v. Doorga Churn* (1875) 24 W. R. 121; *Jethabhai v. Girdhar* (1896) 20 Bom. 158, 164.

S. 50

Illustration

In 1867 *A* executes a deed of mortgage of his property to *B* for Rs 95 The deed is optionally registrable under Act 20 of 1866 and is not registered In 1876 *A* executes a deed of sale of the same property to *C* for Rs 150 The deed is compulsorily registrable, and it is registered under Act 8 of 1871 *C* s deed, being *compulsorily* registrable, is not entitled to priority over *B* s deed which was *optionally* registrable

' *Duly registered* —There was no difficulty, up to the time of the passing of the Registration Act 3 of 1877 in deciding cases of the kind given in the above illustration, for the decisions proceeded on the language of sec 68 of Act 16 of 1864, and sec 50 of Acts 20 of 1866 and 8 of 1871, which was clear beyond all doubt But the enactment of sec 50 of the Act of 1877, which created a priority for documents *compulsorily* registrable, gave rise to some difficulty Had sec 50 of the Act of 1877 a retrospective operation on documents *compulsorily* registrable under the previous Acts, namely, Act 16 of 1864 Act 20 of 1866 and Act 8 of 1871, and *registered under* those Acts or did it apply only to compulsorily registrable documents *registered under Act* 3 *of* 1877 ? The answer depended on the meaning of the words duly registered " in sec 50 of the Act of 1877 It has been held by the High Court of Bombay that the section has no retrospective effect and that the words duly registered " in that section mean duly registered under the Act of 1877, and not under any prior Act (*m*) According to the Bombay decisions the sale deed to *C* in the case put in the above illustration, not having been registered under the Act of 1877, is not entitled to priority over the mortgage deed to *B* According to those decisions the rights of the parties must be decided according to the law in force when the documents were executed The reasons for the view taken by the High Court of Bombay may be stated in the words of Melvill, J (*n*) ' Under the law in force at the time of the registration [*i e*, Act 8 of 1871] the plaintiff s title [that is, *B* s title in the case put in the above illustration] was good against that of the defendant [that is, *C*] If we apply section 50 of the new Act, the plaintiff [*B*] loses his right, and the defendant [*C*] acquires a title to which, when he registered his deed, he had no claim It is to be presumed that the Legislature did not intend, by a retrospective operation, to destroy one existing title and to set up another The express provision contained in the Explanation to section 50 of Act III of 1877, by which retrospective effect is given to the word ' unregistered ' in some measure suggests the

(*m*) *Kanitkar* v *Joshi* (1881) 5 Bom 442, *Iccharam* v *Govindram* (1881) 5 Bom. 653, *Lakshmandas* v *Dasrat* (1882) 6 Bom. 168 192, *Pupchand* v *Dalatrav* (1882) 6 Bom 495, *Shivram* v *Saya* (1889) 13 Bom. 229, 233.

(*n*) *Kanitkar* v *Joshi* (1881) 5 Bom 442, 445 446

inference that a [illegible] [illegible]ective effect was not intended to be given to the word 'registered' S. 50

In 1882 a [illegible] of the Full Bench of the Allahabad High Court held, as was [illegible] the High Court of Bombay, that the section was not retrospective (o) [illegible] in the majority, and expressed the [illegible] [illegible] meant duly registered *under the law for the time being* [illegible] it was the Act of 1864 or of 1866 or of 1871 or of 1877 In a later [illegible] (p) a Divisional Bench of the same High Court [illegible] and Brodhurst J, held that the section was retrospective [illegible] was a party to the Full Bench ruling [illegible] judgment to the Full Bench case According to this [illegible] in the case put in the above illustration would be entitled to priority over *B*'s deed though it was registered under Act 8 of 1871 The [illegible] came up in a later case (q) before a Divisional Bench of the same High Court consisting of Stuart, C J, and Straight, J, when Stuart C J adhered to the opinion expressed by him in the Full Bench case The learned judge observed that the Full Bench decision did not apply to the facts of the case (though it certainly did) and criticised the reasoning of the majority judgment as an argument with respect to the policy of the Act and not an exposition of an existing law to be judicially interpreted with reference to its actual terms He then went on to say, "Here the 'Explanation' appended to sec 50 of the Registration Act is distinctly and intentionally retrospective, and it cannot be got rid of on any views of vested rights or otherwise but must be applied and enforced, and the meaning of the 'Explanation' is that registration *under any of the Acts mentioned in it* is to have precisely the same effect as to the priority of any registered instrument as registration under Act III of 1877 If my colleagues differ from me on this point, I would feel obliged by their saying to what possible cases the registration provided in the 'Explanation' applies" (r) Straight, J, [illegible]
was directly [illegible]
that he considered himself bound by [illegible]

The High Court of Madras has held that sec 50 of Act 3 of 1877 is retrospective in its operation (s) In one of the cases the learned Judges

(o) *Sri Ram* v *Bhagirath* (1882) 4 All 227 [F B], *Bhola Nath* v *Baldeo* (1879) 2 All 198, *Kanhaiya Lal* v *Bansidhar* (1884) 4 All W N 136, *Karamat Ali* v *Muhamad* (1886) 6 All W N 15

(p) *Habib ullah* v *Nakched Rai* (1883) 5 All. 447, 451

(q) *Dori Lal* v. *Umed Singh* (1883) 6 All 161

(r) The answer had already been given by the majority of the Full Bench, namely, in cases where the registered document for which priority is claimed, was registered *under Act 3 of 1877*

(s) *Kallarolathuran* v *Subbaroya* (1880) 3 Mad. 73, *Muthanna* v. *Alibeg* (1882) 6 Mad 174

S. 50 said "As by the Explanation appended to the section, 'unregistered' means not registered according to the particular Act in force at the time of execution, it is left to be inferred that 'registered' means 'registered' *according to any such Act* (t)

The point arose, but was not decided, in a Calcutta case (u) It was there held that sec 50 of Act 3 of 1877 did not apply to the case as the suit was filed in 1876 before the Act came into force In a later case it was said by the Calcutta High Court that the words duly registered meant registered under the Act of 1877 (v)

"*Nothing in sub section* (1) *applies to any registered document which had not priority under the law in force at the commencement of this Act* —Summarizing what has been stated in the preceding paragraph, we may say that the words 'duly registered' in sec 50 of Act 3 of 1877, refer according to the Bombay decisions, to documents registered *under the Act of* 1877 while according to the Madras decisions, they refer to documents registered *under any law for the time being in force for the registration of documents* The course of decisions in Allahabad is not uniform The position then before the passing of the present Registration Act 16 of 1908, was this, that according to the Bombay decisions and some of the decisions of the Allahabad High Court, a registered document, compulsorily registrable had no priority over an unregistered document optionally registrable, unless the former document was registered under the Registration Act 3 of 1877

While drafting the Registration Bill which eventually became Act 16 of 1908, the Legislature was confronted with a difficulty That difficulty arose from the definition of "registered" in the General Clauses Act 10 of 1897, sec 3 (15) *That definition runs thus* "'*Registered,' used with* reference to a document, shall mean registered in British India *under the law for the time being in force for the registration of documents*" The definitions in sec 2 of the General Clauses Act apply only to Acts passed *after* its commencement Such being the case, the definition of "registered" in that Act did not apply to the expression "registered" in sec 50 of the Registration Act 3 of 1877 But it would apply to that expression in the new Registration Act, with the result that a document registered under any Act before the Act of 1877 would acquire priority over a previous unregistered document This would alter the law as interpreted in Bombay, and would confer on documents registered before the Act of 1877 a priority which they did not possess according to the Bombay decisions and according also to some decisions of the Allahabad High Court It was, on the whole, thought best to keep those documents in the same position as regards

(t) *Kallacolathuran* v *Subbaroya* (1882) 6 Mad 174 176

(u) *Ojhra Singh* v *Ulukhi Koer* (1873) 4 Cal 537

(v) *Gungaram* v *Kalipodo* (1885) 11 Cal 661, 666

priority as they enjoyed under the Act of 1877 and to attain that object the words "or to any registered document which had not priority under the law in force at the commencement of this Act" were added in sub-sec. (2) of the present section. The result is that the law on the subject is left where it was at the commencement of this Act. S. 50

Summarizing the above, it may be said that the word "registered" in sub-sec. (1) has the meaning assigned to it by sec. 3 (45) of the General Clauses Act, subject to the limitation that the rule as to priority contained in that sub-section is not to apply "to any registered document which had no priority under the law in force at the commencement of this Act".

IV. Where one of the documents is executed before Act 3 of 1877 came into force, that is, April 1, 1877, and the other after that date. A document registered under Act 3 of 1877, whether its registration is *compulsory* (u) or optional (v), is entitled to priority over an unregistered document executed while any one of the previous Acts, namely Act 16 of 1864, Act 20 of 1866 and Act 8 of 1871, was in force and *optionally* registrable under it. This follows from the language of the Explanation appended to sec. 50 of Act 3 of 1877 [see p. 201 above], reproduced in the Explanation to the present section. See notes "Scope of the section" on p. 208 above, and note "Explanation to the section" on p. 209 above.

Illustration

In 1875 *A* executes a mortgage deed of his property to *B* to secure an advance of Rs. 80. The deed is optionally registrable under Act 8 of 1871, and is not registered. In 1878 *A* executes a deed of sale of the same property to *C* for Rs. 200. The deed is compulsorily registrable, and is registered under Act 3 of 1877. *C*'s deed is entitled to priority over *B*'s deed. *Lachman Das* v. *Dip Chand* (1880) 2 All. 851 [F. B.]. The result would be the same if *B*'s deed was executed while Act 16 of 1864 or Act 20 of 1866 was in force and was unregistered.

V. Where both documents executed after Act 3 of 1877 came into force. A document registered under Act 3 of 1877 or the present Act, whether it is registrable compulsorily or optionally, is entitled to priority over an unregistered document executed after that Act came into force. This follows from the language of the first paragraph of sec. 50 of Act 3 of 1877 which is the same as that of sub-sec. (1) of the present section.

(u) *Lachman Das* v. *Dip Chand* (1880) 2 All. 851 [F. B.]; *Gangaram* v. *Kuar Gir* (1880) 2 All. 431; *Abdul Rahim* v. *Zibin Bibi* (1883) 5 All. 593; *Gobind Ram* v. *Bituo* (1883) 3 All. W. N. 104; *Kondayya* v. *Guruvappa* (1882) 5 Mad. 139; *Shib Chandra* v. *Johobux* (1881) 7 Cal. 570; *Gungaram* v. *Kalipodo* (1885) 11 Cal. 661; *Keshav* v. *Vinayak* (1894) 18 Bom. 355; *Jethabhai* v. *Girdlar* (1896) 20 Bom. 158.

(v) *Janki Prasad* v. *Sri Mutra* (1885) 7 All. 577, 581.

S. 50

Section does not invalidate unregistered documents which are optionally registrable.—All that is provided by the present section is that a registered deed shall *take effect* against an unregistered document relating to the same property It does not invalidate documents that are optionally registrable, and are not registered (*y*) Thus a mortgage, optionally registrable, but not registered, is not in itself invalid (*z*) Hence if the mortgaged property is sold by a subsequent mortgagee under a registered deed, the mortgagee under the prior unregistered deed is entitled to the surplus if any, left after the satisfaction of the registered mortgage The mortgage, though not created by a registered document, is not invalid merely by reason of the document not being registered (*a*) The effect of non registration is that the unregistered mortgage will rank as a second mortgage, and the subsequent registered mortgage will rank as the first mortgage It need hardly be stated that if the prior mortgage was *compulsorily* registrable, and not registered, it could not affect the property comprised in it having regard to sec 49, and the prior mortgagee would not be entitled to the surplus sale proceeds A claim for surplus sale proceeds is in reality a claim to enforce payment of money *charged* upon the mortgaged property (*b*).

Rival deeds need not be executed by the same person.—It is not necessary under sec 50 of the Act that the rival deeds should be executed by the same person It is sufficient if the property comprised in the registered deed is the same as that comprised in the unregistered deed Thus when a prior unregistered document is executed by the owner thereof, and the subsequent registered deed is executed by his assign (*c*), or, after the owner's death by his heirs (*d*), the section will apply, and the registered deed will have priority over the prior unregistered deed It is the same title which is conveyed by both documents, and that is sufficient (*e*)

Illustration

In 1865 *A* executes a mortgage deed of his property to *B* to secure a loan of Rs 50 The deed is optionally registrable, and is not registered In 1867 *A* sells the same property to *C* by a registered deed In 1874 *C* sells the property by a registered deed to *D* In 1878 *D* sells the property by a

(*y*) *Ganga Ram* v *Bansi* (1880) 2 All 431, 432, *Aziz* v *Ladha Singh* (1883) Punj Rec No 102 at pp 317, 318

(*z*) *Ramaraja* v *Arunachala* (1884) 7 Mad 218 252

(*a*) *Dhanpal Singh* v *Budh Singh* (1913) 35 All. 271, 19 I C. 783, *Padmanabh* v *Khemu* (1894) 18 Bom 681

(*b*) See *Birkhimleo* v *Tara Chand* (1913) 41 Cal. 654 41 I A 45 21 I C 961

(*c*) *Gungaram* v *Kalipodo* (1885) 11 Cal 661, 666

(*d*) *Makandas* v *Shankardas* (1875) 12 Bom H C 241, *Chunilal* v *Ramchandra* (1898) 22 Bom 213, *Kondiba* v *Nana* (1903) 27 Bom 408 411 412, *Umbila Churn* v *Dhurmo Doss* (1869) 11 W. R 128 [a case under Act 19 of 1843].

(*e*) (1898) 22 Bom 213, 215 *supra*

registered deed to *F* for Rs 300 The sale deed to *F* is entitled to priority over *B*'s mortgage deed though it is executed not by *A*, but by *D*, a purchaser from *A*'s purchaser [*C*] *Gungaram* v *Kalipodo* (1885) 11 Cal 661 S. 50

Rival deeds must be antagonistic —This section provides that a registered document shall take effect as regards the property comprised therein, against every unregistered document relating to *the same property* It seems clear that this provision can only apply to cases in which the property conveyed by the two documents is the same, or in which the property conveyed by one document includes the property conveyed by the other In other words, it applies where the two documents are antagonistic, not where effect can be given to each without infringement of the other (*f*) 'Thus if *A* mortgages his estate to *B*, and afterwards sells the same estate to *C*, *C* may, by registering his conveyance, get rid of the unregistered mortgage, but he cannot do so, if his conveyance is, in terms, only a conveyance of the equity of redemption, for then the estate given to *B* and the estate given to *C* are separate and distinct, and can exist together So if *A mortgages or sells* to *B*, and afterwards *C* purchases at a Court sale the then existing right, title, and interest of *A*, *C* buys in the one case the equity of redemption, and in the other case nothing at all Registration, therefore, cannot help him, for, on the very face of his certificate of sale, the property comprised therein is not the property previously conveyed to *B*, but only the residue of *A*'s estate after such conveyance ' (*g*)

Illustrations

(1) In 1878 *A* executes a mortgage deed of his property to *B* to secure a loan of Rs 75 The deed is optionally registrable, and is not registered In 1879 *A* sells the same property by a registered deed to *C subject to B*'s mortgage *B* sues *C* to enforce his mortgage by a sale of the mortgaged property *C* contends that the mortgage deed to *B* not being registered, his sale deed is entitled to priority over the mortgage deed, and *B* cannot therefore proceed against the *property* *C*'s contention cannot prevail, for what was sold to *C* was *A*'s equity of redemption, and not *A*'s entire interest in the property, and effect can be given to each document without infringement *of the other Had the sale to C not been subject to B's mortgage*, his sale deed would have prevailed under sec 50 over *B*'s mortgage deed But

(*f*) *Sobhagchand* v *Bhaichand* (1882) 6 Bom 193, 208 [F B], *Bapuji* v *Satyabhamabai* (1882) 6 Bom 490, *Ramaraja* v *Arunachala* (1884) 7 Mad 248, *Narasayya* v *Jungam* (1884) 7 Mad 418, *Ramachandra* v *Krishna* (1886) 9 Mad 495, *Lackhmichand* v *Kastur* (1872) 9 Bom H C 60, *Ishri Prasad* v *Gopi Nath* (1912) 34 All 631, 635, 17 I C 19 See also *Maganlal* v *Shakra* (1898) 22 Bom 945, *Dhondi* v *Appa* (1928) 30 Bom L. R. 720, 113 I. C. 523, (28) A. B 269

(*g*) 6 Bom 193, 208 *supra*

S. 50 the sale being subject to the mortgage, *B* is entitled to a decree for sale *Ramachandra* v *Krishna* (1869) 9 Mad 495

(2) In 1870 *A* executes a mortgage deed of his property to *B* to secure a loan of Rs 90 The deed is optionally registrable, and is not registered In 1872 the property is put up for sale in execution of a decree obtained by a creditor of *A* against him and it is purchased by *C* for Rs 77 *C* obtains a certificate of sale, and it is registered *B* sues *C* to enforce his mortgage by a sale of the mortgaged property *C* contends that both documents being optionally registrable and his certificate being registered, it is entitled to priority over *B*s mortgage deed under sec 50 of Act 8 of 1871 This contention cannot prevail, for a purchaser at a Courtsale acquires only the *right title and interest* of the judgment debtor in the property sold, and the property being subject to the mortgage at the date of sale, what *C* purchased was not *A*'s entire interest in the property but the property subject to the mortgage The case therefore, stands on the same footing as the case put in ill (1), and *B* is entitled to a decree for sale *Sobhagchand* v *Bhaichand* (1882) 6 Bom 193 [F B] *Note*—This question cannot now arise, for a certificate of sale being one of the documents mentioned in sub sec (2) of sec 17, sec 50 does not apply to it see sec 50 sub sec (2)

(3) *A* executes an unregistered mortgage in favour of *B* Subsequently *B* sells the property to *C* by a registered deed *A* sues *B* and *C* for redemption Here the mortgage deed is passed by a person who is the owner of the property, while the sale deed is passed by one who has only the rights of a mortgagee The titles under which the competing deeds are passed are quite different and in order that there should be a competition between two documents under sec 50 the title must be the same Here there is no identity of title *C* therefore takes the property subject to the mortgage of *B* *Dhondi* v *Appa* (1928) 30 Bom L R 720, 113 I C 523, ('28) A B 269

"Every unregistered document."—This includes a *san* mortgage, that is, a mortgage of property in Gujarat which is deemed to be complete though not accompanied with possession A *san* mortgage bond which is optionally registrable and not registered, is liable to be postponed to a subsequent registered mortgage deed relating to the same property as much as any other unregistered document (*h*)

"Not being a decree or order."—A decree or order, though unregistered, is not liable to be postponed to a subsequent registered document relating to the same property It follows from this that if a mortgagee under a deed optionally registrable, and not registered, obtains a *mortgage decree* upon his mortgage, he is entitled, *by virtue of the decree*, to priority over a subsequent transferee of the same property under a registered

(*h*) *Jethabhai* v *Gordhan* (1896) 20 Bom 1 8

instrument (i). But the decree must not be merely a money decree. Decrees excepted from the operation of sub-sec. (1) are decrees which by their nature are either compulsorily registrable under cls. (a), (b), (c) or (d) of sub-sec. (1) of sec. 17, or optionally registrable under cl. (a) or cl. (b) of sec. 18, that is, decrees which create, declare, etc., an interest in immoveable property. A mortgage-decree, as distinguished from a money decree, is a decree of that kind. Such a decree supersedes the unregistered mortgage deed, the deed merging in the decree, and itself operates as a document of title which, though unregistered, is entitled to priority over the subsequent registered document (j). S. 50

But the unregistered decree will not be entitled to priority if it is obtained after the execution of the subsequent registered document (k). As stated by Edge, C. J., in an Allahabad case (l), "under sec. 50 of the Registration Act the decree or order which is not to be affected by a registered document must be a decree or order made *prior to* the execution and registration of the registered document."

Illustration

In 1880 A executes a mortgage deed of his property to B to secure an advance of Rs. 50. The deed is optionally registrable and is not registered.

In 1882 A executes a mortgage deed of the same property to C. The deed is registered.

If B obtains a mortgage decree *before* the execution and registration of the mortgage to C, the decree will supersede the unregistered mortgage and, though not registered, will not be liable to be postponed to the mortgage deed to C. Suppose that the property is sold under the decree and purchased by D. Suppose also that C obtains a mortgage decree upon his mortgage and that the property is sold under the decree and purchased by F. D will be entitled, for the reasons given above, to possession of the property to the exclusion of F.

But if B obtains a mortgage decree on his mortgage *after* the date of execution of the mortgage deed to C, the decree will have no such effect.

(i) *Kolluri v. Immanna* (1880) 3 Mad 71; *Raghunath v. Lachman Das* (1885) 7 All 888.

(j) *Keshav v. Gopal* (1894) 18 Bom 355 [F. B.].

(k) *Shahi Ram v. Shib Lal* (1885) 7 All 378; *The Himalaya Bank Ltd. v. The Simla Bank Ltd.* (1886) 8 All 23; *Raghubans v. Ganji* (1886) 6 All W N 133; *Jograj Rai v. Radhey Singh* (1891) 13 All 288; *Baldeo Prasad v. Baldeo* (1901) 21 All W N 112; *Madar v. Subbarayulu* (1883) 6 Mad 88; *Jethabhai v. Dayalji* (1896) 20 Bom 158; *Ishan Chandra v. Gonesh Chandra* (1901) 28 Cal 139; *Ram Ditta v. Amir Chand* (1889) Punj Rec No 195; *Pir Bakhash v. Kadir Bakhash* (1898) Punj Rec No 32.

(l) (1891) 13 All 288, 289 *supra*.

S. 50 The rights of the parties in such a case remain what they were before the decree. Prior to the decree C's deed, being registered, had priority over B's unregistered deed. This priority is not affected by any decree obtained by B subsequent to the execution of the mortgage to C.

Sec. 17 (2) (vi) is now amended by excluding from its operation decrees or orders expressed to be made on a compromise and comprising immoveable property other than that which is the subject matter of the suit. It follows that such a decree made on a compromise requires registration. Such a decree, however, is not expressly included in sec. 17 (1). It would, however, fall within sec. 17 (1) (b), however inappropriate it may be to call a decree an "instrument". The words used in sec. 50 are "not being a decree or order". Though sec. 17 (2) (vi) is amended, sec. 50 is not. The only way in which the two sections can be reconciled is by holding that the words "decree and order" in sec. 50 refer to decrees and orders which are exempted from registration under the amended sec. 17 (2) (vi). The words first appeared in sec. 50 of the Act of 1871 in which there was no section corresponding to sec. 17 (2) and have been retained by inadvertence in subsequent Registration Acts (*m*).

"Whether such unregistered document be of the same nature as the registered document or not."—Under this section a registered document is entitled to priority over an unregistered document, whether the latter document be of the same nature as the former or not (*n*). Thus a registered deed of *sale* may be entitled to priority over a registered deed of *mortgage* or *gift*. There was a similar provision in the corresponding sections of the Acts of 1864, 1866, 1871 and 1877. [See pp. 200-201 above.]

Under Bengal Regulation 36 of 1793, Madras Regulation 17 of 1802, Bombay Regulation 4 of 1802, and Act 19 of 1843, a registered document was not entitled to priority over an unregistered document unless the latter document was *of the same nature* as the former. Thus a registered deed of sale could have priority over an unregistered deed of sale only, but not over an unregistered deed of gift or mortgage. Bombay Regulation 9 of 1827 contained a provision similar to that in the present section. See notes, "History of the section," on p. 202 above.

Sub-sec. (2).—See notes under the head, "Scope of the section," on p. 203 above.

Explanation to the section.—See notes under the same heading, on p. 209 above.

(*m*) *Jaklumal* v. *Naraindas* (1933) 143 I C 863, ('33) A.S. 151 F. B.

(*n*) *Shrish Chandra* v. *Mongril* (1904) 9 Cal W N 14; *Dhondi* v. *Appa* (1928) 30 Bom L. R. 720: 113 I C 523, ('28) A B 269.

Notice of prior unregistered document **S. 50**

This subject may be considered under the following heads namely —

A Notice of prior unregistered document of which registration is *optional* and

B Notice of prior unregistered document of which registration is *compulsory*

A.—Notice of prior unregistered document of which registration is optional It has been stated in the notes History of the section (page 202 above) that in the early Regulations on registration existing in the various Presidencies before 1843 the doctrine of notice was *expressly* recognized By the recognition of the doctrine it was found that fraudulent unregistered claims were often set up as of previous date as against *bona fide* registered documents and much perjury was committed in investigations touching the fact of such notice To suppress such practices Act 1 of 1843 was passed *expressly* abolishing the doctrine of notice as regards priorities But in subsequent legislations that is in Acts 16 of 1864 20 of 1866 8 of 1871, 3 of 1877 and the present Act 16 of 1908 no mention at all has been made of the doctrine of notice as regards competition between registered and unregistered documents Taking this to be an *implied* revival and recognition of the doctrine, all the High Courts (although some of them at first held a different view) have at present concurred in giving full effect to the doctrine, on the ground that if the doctrine is ignored, the registration law which is expressly intended to prevent fraud would be a most effectual instrument for perpetrating fraud The proposition on which unanimity is established may be stated thus that a subsequent registered document, with *actual* notice of a prior unregistered document of which registration is *optional*, cannot take effect against such unregistered document (o) This doctrine of notice, it may be observed, has been applied to cases arising under all the Registration Acts commencing with Act 16 of 1864 The notice, to affect the subsequent deed, must have been received by the holder of that

(o) *Shivram* v *Genu* (1882) 6 Bom 515, *Dundiya* v *Chenbasapa* (1885) 9 Bom 427, *Hathising* v *Kuvarji* (1886) 10 Bom 105 *Moreshwar* v *Dattu* (1888) 12 Bom 563, *Jivandas* v *Framji* (1870) Bom H C O C 45, 73 *Narain Chunder* v *Dataram Roy* (1882) 8 Cal. 597 [F B], *Fuzludeen* v *Fakir Mahomed* (1880) 5 Cal 336, *Abdool Hossein* v *Raghu Nath* (1886) 13 Cal. 70, *Nani Bibee* v *Hafizullah* (1884) 10 Cal 1073 *Bhalu Roy* v *Jakhu Roy* (1885) 11 Cal 667, *Hurnandun Singh* v *Jawad Ali* (1900) 27 Cal 468 *Gouree Kant* v *Gridhur* (1869) 13 W R 456, *Sreenath Churn Das* v *Dwarkanath* (1870) 14 W R 318, *Diwan Singh* v *Jaltho Singh* (1897) 19 All 145 on app (1898) 20 All. 252, *Ram Lal* v *Bachcha Singh* (1912) 10 All. L J 114 16 I C 625 (no notice), *Krishnamma* v *Suranna* (1893) 16 Mad 148 [F B] *Chinnappa* v *Manickavasagam* (1902) 25 Mad 1, *Shankar Das* v *Sher Zaman* (1900) Punj Rec No 56

S. 50 deed at or before the execution of his deed The Allahabad High Court has held that the doctrine applies even if the subsequent transferee had no notice of the prior unregistered document at the time of execution of his deed but receives notice before it is registered (*p*) The same Court has also held that where the subsequent purchaser buys with notice of the prior unregistered document and the property is pre-empted the purchase by the pre-emptor is affected by the notice which his vendor had though he himself had no notice of the prior document at the time of pre-emption the reason given being that a pre emptor stands in the shoes of his vendor in respect of all the rights and obligations arising from the sale to his vendor (*q*) The burden of proving notice where notice is alleged rests upon the person who alleges the notice Such notice must also be averred in the pleadings (*r*)

A property is mortgaged first by a registered instrument to secure a loan of Rs 300 and afterwards by an unregistered mortgage to the same person to secure a loan of Rs 99 By the second deed of mortgage the mortgagor agrees to pay both amounts before he could redeem The mortgagor subsequently sells the property to a purchaser who has no notice of the unregistered mortgage The purchaser is not bound by the covenant contained in the second mortgage deed to repay both amounts and he is entitled to redeem on payment of the amount secured by the first mortgage (*s*)

Illustration

In 1876 A executes a mortgage deed of his property to *B* to secure an advance of Rs 50 The deed is *optionally* registrable and is not registered In 1884 A sells the same property to *C* by a registered deed *C* had at the date of his purchase notice of the prior unregistered mortgage to *B* *C*'s deed is not entitled to priority over *B*'s mortgage *Al lool Hossein* v *Righu Nath* (1886) 13 Cal 70

B —Notice of prior unregistered document of which registration is compulsory—It is settled law [see preceding paragraph] that a subsequent registered document with notice of an earlier unregistered document of which registration is *optional*, is not entitled to priority over the earlier unregistered document But this principle does not apply where the earlier document is *compulsorily* registrable and is not registered The *holder therefore, of a subsequent registered document is entitled to priority* over the holder of an earlier unregistered document of which registration is *compulsory* even though the holder of the registered document has notice of the earlier unregistered document (*t*) The reason is that where a document

(*p*) *Akali Ram* v *Himmata* (1908) 30 All. 238 followed in *Rodhal Mal* v *Ramj dis* (1933) 146 I C. 40 (33) A I. ( ) 9)

(*q*) *Tejpal* v *Girdhari Lal* (1908) 30 All 13)

(*r*) *Chinnappa* v *Manickavasagam* (1) Mad I *Magu* v *Bholi Dass* (1911) 1J Cal. L.J 352 354 20 I C 19)

(*s*) *Ram Chulam* v *Ram Chandra* (192) 47 All 338 80 I C 177 ( ) A 3

(*t*) *Harn n Das* v *Hire* (188) I n 1) [F B]

S. 50

is *compulsorily* registrable, but is not registered, it *does not affect* the property comprised in it having regard to sec 49 The holder of such a document acquires no title to the property, and notice of such a document on the part of the holder of a subsequent registered document cannot confer upon him a title which he otherwise has not It is different, however, in the case of a document which is *optionally* registrable, and is not registered Here the holder of the document has a perfectly good title to the property The document is not touched by sec 49 The only effect of the document being unregistered is that if the property is subsequently transferred to another person by a registered document, the latter document will acquire priority over the prior unregistered document, unless the holder thereof had notice of the prior document In other words, notice is effective as between two documents which are valid in law, but not where one of the documents is invalid by reason of non registration

Whether possession is equivalent to notice

This subject may be considered under the following heads namely—

A —Whether possession under an unregistered document *optionally* registrable is equivalent to notice of such document

B —Whether possession under an unregistered document *compulsorily* registrable is equivalent to notice of such document

A.—Whether possession under an unregistered document optionally registrable is equivalent to notice of such document.— As seen in the notes on p 223 above, all the High Courts are unanimous in holding that the holder of a subsequent registered deed, with *actual* notice of an earlier unregistered deed of which registration is *optional*, is not entitled to priority over the holder of the earlier deed Suppose now that the holder of the subsequent registered deed had no *actual* notice of the earlier unregistered deed, but the holder of the earlier unregistered deed was in possession at the date of execution of the subsequent deed, does his possession amount to *notice* to the holder of the subsequent deed so as not to entitle the subsequently registered deed to priority over the earlier unregistered deed ?

The High Courts of Bombay (*u*), Madras (*v*), and Allahabad (*w*) have held that possession amounts to notice of such title as the person in

(*u*) *Lakshmandas* v *Dasrat* (1882) 6 Bom 168 187 188 [1 B] *Sharfudin* v *Govind* (1903) 27 Bom 452, 469-470 *Kondiba* v *Nana* (1903) 27 Bom 408, *Waman* v *Dhondiba* (1880) 4 Bom 126, *Dundaya* v *Chenbasappa* (1885) 9 Bom 427, *Balaram* v *Appa* (1872) 9 Bom H C 121, *Manmal* v *Dashrath* (1872) 9 Bom H C 147, *Nagesh* v *Baliantrav* (1872) 9 Bom H C 151, *Ganpat* v *Khandu* (1867) 4 Bom H C 69, *Hari* v *Hari* (1900) 2 Bom L R 110, *Karbasappa* v *Dharmappa* (1900) 2 Bom L R 223

(*v*) *Krishnamma* v *Suranna* (1893) 16 Mad 148 [F B]

(*w*) *Bhikhi Rai* v *Udit Narain Singh* (1903) 25 All 366, 370, *Ram Autar* v *Dhanauri* (1886) 8 All 540

S. 50 possession may have and any other person who takes a mortgage or other charge upon, or purchases immoveable property without ascertaining the nature of the claim of the person in possession does so at his own risk The holder of the prior deed may be in actual possession, or he may be in constructive possession through his tenants But if he leases the property to his own vendor the constructive possession which he has through the vendor as his tenant does not amount to notice to the subsequent transferee The reason is that the *vendor s* possession can afford no notice to the subsequent transferee of the first transferee s title Finding his intended vendor in possession the subsequent transferee would have no reason to suppose that he was there otherwise than as owner (*x*)

Illustration

A sells land to *B* for Rs 75 and puts *B* into possession The sale deed is *optionally* registrable and is not registered *A* then sells the same land to *C* by a registered conveyance *B* s possession amounts to notice to *C* of *B* s title with the result that *C* s deed is not entitled to priority over *B* s deed But if *B* l ts the land to *A* and *A* is in possession at the date of the sale to *C* *B* s possession through *A* as his tenant does not amount to notice to *C* of *B* s title for the *apparent* possession is in *A* *C* s vendor

The High Court of Calcutta has held that possession is *not conclusive evidence of notice* though it is *very cogent evidence of notice* and that you cannot deprive a subsequent registered deed of priority over a prior unregistered deed unless it be proved that the subsequent transferee was aware or ought to have been aware when he took his transfer, that the first transferee was in possession of the property *and* had acquired the property under the unregistered deed The mere fact that the subsequent transferee had notice of the first transferee s possession is not sufficient It must also be proved that he knew or ought to have known that the first transferee got the property under the unregistered deed (*y*) The distinction between the view taken by the High Court of Calcutta and that taken by the other High Courts may be explained by the following—

Illustration

A who owns certain land, leases it to *B* In 1875 *A* sells the land to *B* for Rs 75 The sale deed is optionally registrable and is not registered *B*, who was in possession of the land as *A* s tenant before the sale, continues

(*x*) *[illegible] v [illegible]* (1888) 12 Bom 69 72 *Chundlal v Ramchandra* (1898) 22 Bom 213 216 *[illegible] v [illegible]* (1928) 6 Rang 715, 112 I C 230 (28) A I [illegible]

(*y*) *[illegible] Chunder v Dilaram Joy* (188) 8 Cal 597 [F B] overruling *D nonath v [illegible]* (1881) 7 Cal 753 and approving *[illegible] v Fakir* (1879) 5 Cal 336 *[illegible] v Hafizullah* (1884) 10 Cal 1073 1075 1076 *[illegible] v [illegible]* (1914) 19 Cal L J [illegible] I C [illegible] *Narain Doss v Gunga Ram* (1873) 20 W R 287 *Hakeem v [illegible]* (1874) 22 W R 8

in possession as owner after the sale In 1876 *A* sells the same land to *C* by a registered deed *C* sues *B* for rent of the land alleging that *B* was *A* s tenant and that *B* became his [*C* s] tenant after the sale of the land to him It is admitted by *C* that he knew when he bought the land that *B* was in possession but it is alleged that he honestly believed that *B* was in possession as *A* s tenant as *B* was in occupation of the land as *A* s tenant for some years past and that he did not know of the sale to *B* Is *C* s deed entitled to priority over *B* s? According to the Bombay High Court it is not for *C* having notice of *B* s possession it must be held also that he had *constructive notice of the title* on which *B* held the land *Kondiba* v *Nana* (1903) 27 Bom. 408 412 413 According to the Calcutta High Court it cannot be presumed *in a case such as the above* that *C* was aware of *B* s title for the possession which *B* held after the sale deed to him was executed was perfectly consistent with *B* s previous position as tenant to *A* (*C* s vendor) under the lease *Faizuddeen* v *Fakir* (1880) 5 Cal 336 343 350 S 50

Possession to continue to the date of subsequent transfer—Whether possession is conclusive evidence of notice or merely very cogent evidence of notice, it cannot amount to notice of either kind unless it continues to the date of the subsequent transfer (z)

Transfer of Property Act, sec 3, Explanation II—It is now provided by Explanation II annexed to the definition of notice in sec 3 of the Transfer of Property Act that any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title if any of any person who is for the time being in actual possession thereof

B—Whether possession under an unregistered mortgage compulsorily registrable is equivalent to notice of such document—We have already dealt with this subject so far as regards sale in the notes to sec 49 Part performance on p 191

As regards mortgages it has been held by the Chief Court of the Punjab that a subsequent registered deed is entitled to priority under the section over an unregistered deed of mortgage *compulsorily* registrable, but not registered though the mortgagee may be in possession under his mortgage (a)

Adverse possession under an unregistered document—A document compulsorily registrable but not registered may give a starting point for limitation though it may not effect a transfer of the property comprised in it (b) The present section does not affect the operation of the law of

(z) *Ghasu* v *Amirullah* (1881) 1 All W N 33 See also *Narain Chunder* v *Dataram Roy* (1882) 8 Cal 597 608 610

(a) *Mushka Khan* v *Jafir Khan* (1884) Punj Rec No 126 See also *Issuree* v *Lall Behari* (1874) 21 W R 421

(b) *Immudipattam* v *Periya* (1901) 24 Mad 377 384, 28 I A 46

S. 50 limitation as to adverse possession in favour of a person who claims under an unregistered document (c) In 1865 *A* executes a deed of sale of his land to *B* for Rs 399, and puts *B* into possession of the land The deed, though compulsorily registrable, is not registered In 1876 *A* sells the same land to *C* by a registered deed In 1878, that is, more than 12 years after the date of the sale to *B*, *C* institutes a suit against *B* for possession It is contended for *C* that his deed being registered is entitled to priority over *B*s deed, and he is therefore entitled to possession On behalf of *B* it is conceded that *C*s deed is entitled to priority, but it is contended that that does not conclude the matter, and that he (*B*) having been in adverse possession for upwards of 12 years, *C*s claim should be disallowed *B*'s contention must prevail and *C*s suit should be dismissed (*d*) The result would be the same if the sale deed to *B* was *optionally* registrable, and not registered (*e*) See notes to sec 49, "As evidence of Character of possession," on p 177 above

Optional registration and Transfer of Property Act.—Optional registration was abolished by the Transfer of Property Act, 1882, as to sale deeds by sec 54 and as to mortgage deeds by sec 59 as amended by Act 6 of 1904 But this is confined to territories to which that Act extends, outside those territories optional registration, under the Registration Act is still in force

Fraud as affecting priority.

Fraud as affecting priority.—It is a well recognised maxim of law that no man can gain title by fraud (*f*) It may be said of this Act, as it was said by Lord Redesdale of the Irish Registration Act (6 Anne, c 2), that the intention was to make priority of registry the criterion of title to all intents and purposes whatsoever But this does not exclude anything which affects the conscience of the party himself who claims under the registered deed, *it never was the intention of the legislature to give a priority of right to commit a fraud*, but its meaning was that, parties dealing fairly, priority should be given to him who had the registered instrument, and that in equity as well as at law ' (*g*) In *Sreenath* v *Ram Comul* (*h*), which was a case under Act 19 of 1843 their Lordships of the Privy Council

(c) *Nallimuttu* v *Betha* (1900) 23 Mad 37, *Bulinlayala* v *Iinayala* (1903) 26 Mad 72

(d) *Sambhubhai* v *Shidallia* (1880) 4 Bom. 80, *Uttam Chand* v *Janji Ram* (1918) Punj Rec No. 111 p 358 48 I C 390

(e) 23 Mad. 37 *supra* 26 Mad 72, *supra*

(f) *Sheik Ilhamtulla* v *Sheik Sarutulla* (18) 1 Beng. L. R 82, per Peacock C J, *Ram Autar* v *Dhanauri* (1886) 8 All. 540 542

(g) *Latouche* v *Lord Dunsany*, 1 Sch & Lefroy 137, 159, *Meer Shumshare* v *Syud Lutafut* (1872) 18 W R. 501, *Annu Mal* v *The Collector of Bareilly* (1906) 28 All. 315

(h) (1863) 10 M I A 220 3 W R P C. 43, *Krishnamma* v *Suranna* (1893) 16 Mad 158 160 161, *Narasimulu* v *Somanna* (1885) 8 Mad 167, 168

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said "Their Lordships think that it could not be intended by the Act that a deed which was tainted by fraud, although in other respects genuine, should be placed on the same footing as an honest and bona fide deed They are not disposed so to construe the Act but they think that at all events a registered deed cannot be deprived of the priority given by the Act *unless it be both alleged and proved that there was fraud on the part of the grantee* [holder of subsequent registered deed] and in this case no fraud is alleged, and certainly none is proved on the part of Mozoomdar It would be going much too far to impute fraud to a purchaser *upon the mere ground that he had bought up a possible claim* and so far as their Lordships can find there is nothing beyond this affecting Mozoomdar either in point of allegation or of proof " The mere fact that a mortgagee parts with the title deeds of the mortgaged property to the mortgagor and the mortgagor subsequently obtains a loan on the security of the deeds from *B* who advances the money without notice of the first mortgage, does not amount to fraud so as to postpone the first mortgage to *B*'s (i)

In this connection we may note the provisions of sec 78 of the Transfer of Property Act 1882 by which it is provided that where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee

Subsequent registered document obtained pendente lite.

Where the subsequent registered document is obtained pendente lite.—Sec 52 of the Transfer of Property Act, 1882, relates to the doctrine of *lis pendens* That doctrine was in force in British India even prior to that enactment (j) The doctrine of *lis pendens* is that *pendente lite*, that is, pending the suit, neither party to the suit can alienate the property in dispute so as to affect his opponent The doctrine applies to alienations made before as well as after service of summons on the defendant in the suit (k) But if the document is executed before the institution of the suit, the fact of its being registered *pendente lite* is immaterial (l) It also [illegible]

(i) *Balmakundas* v *Moti* (1894) 18 Bom 444 See also *Monindra Chandra* v *Troyluckho Nath* (1898) 2 Cal W N 750, *Damodara* v *Somasundra* (1889) 12 Mad 429 and *Madras Building Company* v *Rowlandson* (1890) 13 Mad 383, *Rangasami* v *Annamalai* (1908) 31 Mad 7, *Chettiappa* v *Periasami* (1910) 20 Mad L J 979, 7 I C 810

(j) *Lakshmandas* v *Dasrat* (1882) 6 Bom 168

(k) *Faiyaz Hussein* v *Munshi Prag Narain* (1907) 29 All 339, 34 I A 102

(l) *Bapuji* v *Icharam* (1877) Bom H C P J 81, *Venkataramana* v *Rangiah Chetti* (1921) 41 Mad L J 399, 70 I C 212, ('22) A M 249 [illegible] the contrary [illegible] *dhari Singh* v [illegible] (1920) 5 Pat L J 717, 59 I C 290, ('21) A P 170

S. 50 to alienations made pending proceedings in execution to realize a mortgage after a decree for sale (*m*)

Illustration

In 1882 A mortgages his house to *B* to secure a loan of Rs 75 The mortgage deed is optionally registrable, and is *not registered* In 1883 *B* sues *A* on the mortgage, and obtains a decree for sale Pending the suit, *A* sells the house to *C* by a *registered* deed, and puts *C* into possession of the house The house is sold in exclusion of *B*'s decree and purchased by *P* *P* sues C for possession *C* contends that he being a purchaser under a *registered* deed is entitled to possession to the exclusion of *P*, as *P* purchased the house in *execution* of a decree obtained on an *unregistered* document *P* contends that *C* having purchased the house *pending the suit*, the alienation is ineffectual as against him *P*'s contention must prevail, and he is entitled to possession The unregistered mortgage being merged in the mortgage decree there is no question of any competition between a registered and an unregistered document to which sec 50 could properly apply The question is whether *C*'s purchase is not subject to the decree *C*'s purchase having been made pending the suit, is subject to the mortgage decree, and, the deed of sale in his favour, *whether registered or not*, can give him no rights as against the right which *P* has as purchaser under the decree (*n*) Compare notes "Not being a decree or order," on p 220 above

Registration is notice

Registration as notice—The law on the subject has now been codified in Explanation I to sec 3 of the Transfer of Property Act The Explanation was inserted in the section by sec 4 of the Transfer of Property (Amendment) Act, 1929, which was subsequently amended by sec 2 of Act V of 1930 The Explanation is as follows —

> "**Explanation I.**—Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub district, or where the registered instrument has been registered under sub section (2) of sec 30 of the Indian Registration Act, 1908, from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub district any part of

(*m*) *Shivji* v *Raman* (1898) 22 Bom 939 *Raj Kishen* v *Radha* (1874) 21 W R 349, *Jharoo* v *Raj Chunder* (1886) 12 Cal 299

(*n*) *Bhagwan Das* v *Nathu Singh* (1884) 6 All 441, *Lalchand* v *Dhondi* (1874) 11 Bom H C 64

the property which is being acquired, or of the property wherein a share or interest is being acquired is situated **S. 50**

Provided that —

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act 1908, and the rules made thereunder,

(2) the instrument (or memorandum) has been duly entered or filed as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act '

The effect of the section is that registration of a document which is *compulsorily* registrable is to be deemed to be notice to a person subsequently acquiring the property comprised in the instrument or any part thereof, or any share or interest in it (*o*)

Previous law.—Before the amendment of the Transfer of Property Act there was a conflict of opinion on the question whether registration of a document under the Registration Act was of itself constructive notice of the transaction effected by the document The High Courts of Bombay (*p*) and Allahabad (*q*) held that it was On the other hand, it was held by the High Court of Madras that registration did not amount to notice in any case (*r*) The decisions in Calcutta were not uniform In some cases the Calcutta High Court took the same view as the Madras High Court (*s*) In two cases, however, namely *Monindra Chandra* v *Troyluckho Nath* (*t*) and *Bunwari Jha* v *Ramjee* (*u*), that Court declined to accept the contention that registration was notice *per se* at the same time it refused to accede to the

(*o*) *Ram Lal* v *Shiama Lal* (1931) 29 All L J 73, 131 I C 38, (31) A A 275

(*p*) *Lakshmandas* v *Dasrat* (1882) 6 Bom 168, *Dundaya* v *Chenbasapa* (1885) 9 Bom 427, *Chintaman* v *Dareppa* (1890) 14 Bom 506, *Narayan* v *Bapu* (1893) 17 Bom 741 *Dina* v *Nathu* (1902) 26 Bom 538, *Mahomed* v *Bai Cooverbai* (1904) 6 Bom L R 1043, *Fatjarao* v *Puttappa* (1910) 12 Bom L R 940, 8 I C 633, *Gordhandas* v *Mohanlal* (1921) 45 Bom 170, 59 I C 506 (21) A B 161, where it was said that registration does not necessarily give notice to anybody of anything

(*q*) *Janki Prasad* v *Kishen Dat* (1894) 16 All 478 479, *Churaman* v *Balli* (1887) 9 All 591

(*r*) *Sian Maun Mull* v *Madras Building Company* (1892) 15 Mad 268

(*s*) *Inderdawan* v *Gobind Lall* (1896) 23 Cal 790, 794, *Preonath* v *Ashutosh* (1900) 27 Cal 358, 362 See also *Debendra* v *Ramtaran* (1904) 30 Cal. 599, 607

(*t*) (1899) 2 Cal W N 750

(*u*) (1902) 7 Cal. W N 11

S. 50 view that in no case could registration be notice in itself. In the latter case Brett and Mittra, JJ, said "Whether it [registration] is or is not [notice in itself] depends, we think, upon the facts and circumstances of each case upon the degree of care and caution which an ordinary prudent man would necessarily take for the protection of his own interest by search into the registers kept under the Registration Act." In the former case Sir Lawrence Jenkins, said 'Apart from authority, however I should have thought, having regard to the statutes applicable in this country that the proposition involved is not one of law but of fact, and that as each case arises it should be determined whether in that individual case the omission to search the register taken together with the other facts amounts to such gross negligence as to attract the consequence which results from notice, and it well may be that this test will serve to reconcile the apparent conflict of view that at first sight the cases suggest. In the Punjab it was held in one case (v), that mere registration did not amount to notice but in a later case (w), it was held that in the circumstances of that case registration of a mortgage deed was sufficient notice thereof to a subsequent transferee of the same property.

The question whether mere registration of a document was *per se* constructive notice of the document came up before the Judicial Committee in *Tilakdhari Lal's* case. In that case their Lordships, after a review of the decisions of the several High Courts refused to accept the view taken by the High Courts of Bombay and Allahabad that registration of a deed was of itself constructive notice of the deed in *every case* as well as the view taken by the High Court of Madras that *in no case* was registration of a deed of itself constructive notice of the deed. They accepted the view taken by the High Court of Calcutta in the two cases referred to above, and observed that the true position was best stated in the passages cited above from the judgments of Brett, J, and Mittra, J, and Sir Lawrence Jenkins. Their Lordships held that registration of a document is not of itself constructive notice of the transaction effected by the document, and that it depends upon the circumstances of each case whether an omission to search the register is such gross negligence as to place the person so omitting in the same position as if he had actual notice. The Privy Council decision has been followed in several cases (x). But it has been superseded by the Explanation added to sec. 3 of the Transfer of Property Act. The Bombay High Court had held that registration cannot operate as notice of an unregistered

(v) *Kanshi Ram v. Pir Baksh* (1904) Punj Rec No 131.

(w) *Alliance Bank of Simla v. Ghan Kahan Singh* (1915) Punj Rec No 4, 25 I C 856.

(x) *Ghulam Muhammad v. Mirza* (1924) 5 Lah. 368, 84 I C 174 ('25) A L. 25 [registered deed of adoption], *A L I M Chettiar Firm v. L I I Chettiar Firm* (1924) 4 Rang 238, 98 I C 19 ('26) A R 105 [registered mortgage].

instrument referred to in the registered deed (*y*), but these decisions are, it is submitted also superseded by the amended section of the Transfer of Property Act S. 50

Fraudulent concealment.—The Bombay High Court has held that registration does not amount to notice where there has been a fraudulent concealment by a judgment creditor of the extent of his judgment debtor s interest in the property brought by the judgment creditor to sale Thus where *A* mortgaged his property to *B* by a registered deed, and *B* then obtained a decree against *A* for a money claim unconnected with the mortgage and had the mortgaged property sold by the Court in execution of his decree and it was purchased by *C* who had no notice of the mortgage the mortgage not having been declared in the proclamation of sale it was held that *B* would lose his rights under the mortgage as against *C if the concealment of the mortgage was fraudulent*, and that the registration of the mortgage would not in such a case amount to notice of the mortgage to *C* (*z*)

Registration is not notice to prior transferees—The decision of the Privy Council has made it clear that registration is not notice to prior transferees (*a*) Thus when a mortgagee makes a sub mortgage of the mortgaged property and the sub mortgage is registered, the registration of the sub mortgage does not amount to notice of the sub mortgage to the mortgagor so as to vitiate payments made by the mortgagor to his mortgagee without actual notice of the sub mortgage (*b*)

Failure of consideration

Failure of consideration—It has been said in some cases that registration of a sale deed constitutes a sufficient delivery of the deed to pass the interest in the property comprised therein (*c*) But it cannot be laid down as a general rule that mere registration of a deed without reference to other circumstances operates to transfer the property (*d*) Thus there may be cases in which the whole or part of the consideration for the deed may not

(*y*) *Chunilal* v *Ramchandra* (1898) 22 Bom 213 *Sharfudin* v *Govind* (1903) 27 Bom 452

(*z*) *Agarchand* v *Rakhma* (1888) 12 Bom 678 682 *Dhondo* v *Raoji* (1896) 20 Bom 290 See also *Tukaram* v *Ramchandra* (1876) 1 Bom 314, where the mortgage was optionally registrable and was not registered

(*a*) *Tilakdhari Lal* v *Khedan Lal* (1920) 47 I A 239, 48 Cal. 1, 57 I C 465, (21) A PC 112

(*b*) *Sahadei* v *Shekh Papa* (1905) 29 Bom 199, followed in *Viswanatha* v *Chinnukutti* (1932) 55 Mad 320, 135 I C 535, (32) A M, 115

(*c*) *Ponnayya* v *Muttu* (1894) 17 Mad 146, following *Narain Chunder* v *Dataram Roy* (1882) 8 Cal 597, 610, *Kanshi Ram* v *Tota Ram* (1906) Punj Rec No 40

(*d*) *Rama Linga* v *Ayyadorai* (1905) 28 Mad 124

S. 50 be paid Does the fact that the sale deed is registered operate to pass the property to the purchaser in such cases? The answer is that it is a question of intention in each case If the intention of the parties was that the ownership should not pass to the purchaser until payment of the whole of the consideration, mere registration of the deed will not pass the title to the purchaser (e) But if there was no such intention, the property will pass to the purchaser even if no portion of the consideration is paid, though the vendor may in such case be entitled to a charge on the property for the unpaid purchase money (f) Similarly, mere registration of a deed of transfer does not pass the title if the intention of the parties was that the ownership should not pass until the happening of a certain specified event (g) See notes to sec 47, Registration as passing title," on p 165 above

Illustration

A sells his property to *B* by a *registered* deed for Rs 500 At the time of the execution of the deed *B* pays only Rs 200, leaving a balance of Rs 300 *A* then sells the same property to *C* by a *registered* deed If it was the intention of *A* and *B* that the ownership of the property should not pass to *B* until the balance was paid, *C* will be entitled to the property by virtue of his purchase But if there was no such intention, the ownership would pass to *B* and the sale deed in favour of *C* would not pass any interest in the property to him

Specific Relief Act, 1877, *sec* 27

Specific Relief Act, sec 27.– Neither the Transfer of Property Act 1882 nor the Registration Act, nor the decisions as to the effect of notice with reference to sec 50 of the Registration Act, override the doctrine of equity contained in sec 27 of the Specific Relief Act It is provided by sec 27 (b) of the Specific Relief Act that specific performance may be granted against a third party claiming under a title arising subsequently to the contract, except a transferee for value who has paid his money *in good faith* and *without notice* of the original contract The words used are "transferee for value" and they signify a person to whom the property is transferred

(e) *Sheo Narain* v *Durbari* (1897) 2 C W N 207, *Mauladu* v *Raghunandan* (1899) 29 Cal. 7, *Sarat Chandra* v *Hari* (1900) 4 Cal L J 339, *Bhagan* v *Allah Ditta* (1911) Punj Rec No 55 p. 213 9 I C 547, *Ram Singh* v *Ganga Ram* (1922) 3 Lah 380 66 I C 161 (22) A I. 376

(f) *Motichand* v *Sagun* (190) 29 Bom 46 50-51, *Moidin* v *Aravan* (1888) 11 Mad 262, *Gostho* v *Rohini* (1908) 13 Cal W N 692, *Jadunandan* v *Korr Kalyan* (1912) 16 Cal. W N 612 13 I C 653 [mortgage], *Nilmadhab* v *Hara Prasad* (1912) 17 Cal W N 116 16 I C. 910, *Shib Lal* v *Bhagwan Das* (1889) 11 All 244

(g) *Ramalinga* v *Ayyadora* (1905) 28 Mad 124

for value which can only be under a registered instrument when the value exceeds Rs. 100. The intention is to adopt the equitable doctrine of notice in suits for specific performance to protect bona fide purchasers for value and to treat at the same time purchasers with notice as persons purchasing subject to the vendor's pre-existing contractual obligation or with notice of a trust in favour of the party entitled to specific performance. Neither the Transfer of Property Act nor the Registration Act overrides this provision of the Specific Relief Act (*h*). S. 50

(*h*) *Kannan* v. *Krishnan* (1890) 13 Mad. 324, 329.

PART XI.

Of the Duties and Powers of Registering Officers.

(A) As to the Register-books and Indexes

S. 51

Register books to be kept in the several offices

51. (1) The following books shall be kept in the several offices hereinafter named, namely –

A—In all registration offices -

Book 1, "Register of non testamentary documents relating to immoveable property",

Book 2, "Record of reasons for refusal to register",

Book 3, "Register of wills and authorities to adopt", and

Book 4, 'Miscellaneous Register",

B—In the offices of Registrars

Book 5, "Register of deposits of wills"

(2) In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18 and 89 which relate to immoveable property, and are not wills

(3) In Book 4 shall be entered all documents registered under clauses (d) and (f) of section 18 which do not relate to immoveable property

(4) Nothing in this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

Local Amendments—The section has been amended, in its application to the Presidency of Bombay, by sec 7 of the Indian Registration (Bombay Amendment) Act 5 of 1929, which came into force on the 22nd May 1929 The amendment is as follows —

> "In sub section (2) of section 51 of the said Act [the Indian Registration Act, 1908] after the figures '89' the word and figures 'sub sections (2) and (4) shall be inserted"

Earlier Act.—See sec 51 of Act 3 of 1877 and Act 8 of 1871, sec 56 of Act 20 of 1866, and secs 56 and 59 of Act 16 of 1864

Book 1 and Book 4. Where it is doubtful whether a document is a mortgage or merely an agreement to mortgage the fact that it is registered in Book 1 or Book 4 affords a guide to the determination of the intention of the parties If it is registered in Book 4 it shows that the parties did not intend it to be a mortgage (i) For other cases see notes to sec 21, Whether registration void if description insufficient on p 115 above and 'Effect of the section on the doctrine of notice' at p 116 **Ss. 51, 52**

Book 4 and Book 3 When a document which on its true construction is a will was registered in the Miscellaneous Register Book 4 instead of in Book 3, the Privy Council said that this point was insufficient to outweigh the terms of the document itself and the other surrounding circumstances which showed that it was a will (j)

Duties of registering officers when document presented

52. (1) (a) The day hour and place of presentation, and the signature of every person presenting a document for registration shall be endorsed on every such document at the time of presenting it,

(b) a receipt for such document shall be given by the registering officer to the person presenting the same, and

(c) subject to the provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefor according to the order of its admission

(2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector General

Earlier Acts—See sec 52 of Act 3 of 1877 and Act 8 of 1871 sec 57 of Act 20 of 1866 and secs 36 and 38 of Act 16 of 1864

Local Amendment—See Part XI A, sec 70 D (3) (c) below

Signature of person presenting the document—The section does not require that the signature of the person presenting a document for registration should appear immediately under the endorsement as to presentation (k)

Erroneous endorsement—In cases where there has been an invalid presentation by an agent not duly authorized, and subsequently a valid presentation by the executant in person, the fact that the sub-registrar

(i) *Jagatdhar* v *Brown* (1906) 33 Cal 1133 1152 1153

(j) *Krishna Rao* v *Sundara Siva Rao* (1931) 58 I A 148 54 Mad 440 131 I C 318, (31) A PC 109

(k) *Kabul Singh* v *Hari Narayan* (1913) 11 All L J 617 20 I C 678

Ss. 52-55

has endorsed the date of the invalid presentation on the deed has been held to be an irregularity which does not vitiate the registration (l) See note, "Presenting document for registration,' at p 136

Entries to be numbered consecutively

53. All entries in each book shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year

Local Amendment —See Part XI A, sec 70 D (3) (d), below

Current indexes and entries therein

54. In every office in which any of the books hereinbefore mentioned are kept, there shall be prepared current indexes of the contents of such books, and every entry in such indexes shall be made, so far as practicable, immediately after the registering officer has copied, or filed a memorandum of the document to which it relates

Local Amendments The section has been amended, in its application to the Presidency of Bombay by sec 8 of the Indian Registration (Bombay Amendment) Act 5 of 1929 which came into force on the 22nd May 1929 The Amendment is as follows —

> In section 54 of the said Act [the Indian Registration Act, 1908] after the word books where it occurs for the second time the words and there shall also be prepared current indexes of the contents of the copies filed under sub sections (1) and (3) of section 89' shall be inserted

Indexes to be made by registering officers and their contents

55. (1) Four such indexes shall be made in all registration offices, and shall be named, respectively, Index No I, Index No II, Index No III and Index No IV

(2) Index No I shall contain the names and additions of all persons executing and of all persons claiming under every document entered or memorandum filed in Book No 1

(3) Index No II shall contain such particulars mentioned in section 21 relating to every such document and memorandum as the Inspector General from time to time directs in that behalf

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(l) *Bharat Indu v Hamid Ali Khan* (1920) 47 I A 177 42 All. 487 58 I C 386 (21) A PC 93, *Barkhurdar v Mst Sat Bharai* (1931) 132 I C 881 (31) A L. 677

(4) Index No III shall contain the names and additions of all persons executing every will and authority entered in Book No 3 and of the executors and persons respectively appointed thereunder and after the death of the testator or the donor (but not before) the names and additions of all persons claiming under the same S. 55

(5) Index No IV shall contain the names and additions of all persons executing and of all persons claiming under every document entered in Book No 4

(6) Each Index shall contain such other particulars, and shall be prepared in such form, as the Inspector-General from time to time directs

Local Amendments —The section has been amended, in its application to the Presidency of Bombay, by sec 9 of the Indian Registration (Bombay Amendment) Act 5 of 1929, which came into force on the 22nd May 1929 The amendment is as follows —

"In section 55 of the said Act [the Indian Registration Act, 1908],

(a) *for sub section* (1) the following shall be substituted, namely —

'(1) six such indexes shall be made in all registration offices and shall be named, respectively, Index No I, Index No I A, Index No II Index No II A, Index No III and Index No IV,'

(b) after sub section (2) the following sub section shall be inserted, namely —

'(2A) Index No I A shall contain the names including the father's name, or, in the case of persons usually described by their mother's name, their mother's name and the places of residence of all persons executing, and of all persons claiming under, the documents of which copies are filed under sub section (1) or (3) of section 89,'

(c) after sub section (3) the following sub section shall be inserted, namely —

'(3A) Index No II A shall contain such particulars mentioned in section 21 as the Inspector General may, from time to time, prescribe in this behalf in regard to every copy filed under sub section (1) or (3) of section 89,

Ss. 55-57

(d) for the words 'and additions' wherever they occur the words 'including the father's name, or, in the case of persons usually described by their mother's name, the mother's name, and the places of residence shall be substituted'

Directions by Inspector-General.—The fact that the Inspector General directs certain particulars to be inserted in an Index cannot override the provisions of sec 22 (2) regarding the description of houses and lands (m)

56. *Repealed by the Indian Registration (Amendment) Act* 15 *of* 1929

Registering officers to allow inspection of certain books and indexes and to give certified copies of entries

57. (1) Subject to the previous payment of the fees payable in that behalf, the Books Nos 1 and 2 and the Indexes relating to Book No 1 shall be at all times open to inspection by any person applying to inspect the same, and, subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies

(2) Subject to the same provisions, copies of entries in Book No 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies

(3) Subject to the same provisions copies of entries in Book No 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative

(4) The requisite search under this section for entries in Books Nos 3 and 4 shall be made only by the registering officer

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents

(m) *Hoosein Abdul Rehman v Lachmichand* (1925) 49 Bom 40, at pp 49 and 70 84 I C 416 (25) A B 34

Local Amendments The section has been amended, in its application to the Presidency of Bombay by sec 10 of the Indian Registration (Bombay Amendment) Act 5 of 1920 which came into force on the 22nd May 1920 The amendment is as follows **Ss. 57, 58**

> In sub section (1) of section 57 of the said Act [the Indian Registration Act 1908] after the words and figure "Book No 1" the following words and figures shall be inserted namely —
>
> and so long as they are preserved the copies filed under sub sections (1) and (3) of section 89 and the indexes relating to such copies

Earlier Acts. See sec 57 of Act 3 of 1877 and Act 8 of 1871 sec 65 of Act 20 of 1866 and secs 59 and 60 of Act 16 of 1864

Sub-sec. (5): Admissibility of certified copies of registration entries – A certified copy of a registration copy is admissible to prove the contents of the original document only when a case is made out for the introduction of secondary evidence *e g* by proof of the loss of the original If such a case is made out the certified copy shall be admitted under this sub section without other proof than the Registrar's certificate of the correctness of the copy and shall be taken as a true copy (*n*) If a certified copy were admissible without requiring a case to be made out for secondary evidence, any one who is dishonestly minded may get any document whatever registered in the Registry Office and then use it against any person alleged to be the executant thereof (*o*) But where the certified copy has been admitted without any objection having been taken that no sufficient foundation has been laid for its admission in evidence, its admissibility cannot be questioned on that ground in an appellate Court (*p*)

Certified copies, however can under sec 76 of the Evidence Act be produced in proof of the *contents of the registration entries* in Books Nos 1, 3 and 4 which are public documents under sec 74 (2) of that Act

Powers of attorney which are not registered but merely authenticated by the sub registrar under sec 33 (1) (a) are not public documents under sec 74 (2) of the Indian Evidence Act (*q*)

(B) *As to the Procedure on admitting to Registration*

Particulars to be endorsed on documents admitted to registration

58. (1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering

(*n*) *Hurish Chunder* v *Prosunno Coomar* (1874) 22 W R 303, *Sri Ram* v *Ram Lal* (1913) 11 All L J 255, 258, 18 I C 878

(*o*) *Shaikh Fyez Ali* v *Omedee Singh* (1874) 21 W R 265

(*p*) *Padman* v *Hanwanta* (1915) 19 C W N 929, 29 I C 807 (P C)

(*q*) *Bishen Sarup* v *Abdul Samad* (1931) 29 All L J 666, ('31) A A 649

S 58 officer under section 89 there shall be endorsed from time to time the following particulars, namely —

(a) the signature and addition of every person admitting the execution of the document and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent,

(b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act, and

(c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document and any admission of receipt of consideration in whole or in part, made in his presence in reference to such execution

(2) If any person admitting the execution of a document refuses to endorse the same the registering officer shall nevertheless register it but shall at the same time endorse a note of such refusal

Earlier Acts See sec 58 of Act 3 of 1877 and Act 8 of 1871 sec 66 of Act 20 of 1866 and secs 30 and 36 of Act 16 of 1864

Signature of person admitting execution — An admission of execution made by a person executing a document before a registering officer is evidence of execution against him but not against a third party (r)

Admission of receipt of consideration —Where a party to a deed admits receipts of consideration before the registering officer but denies receipt of consideration in a subsequent proceeding the burden lies on him to show that he did not receive the consideration The admission would be valueless if it could be gone behind in every case by an assertion that that which was stated at the time before the registering officer was untrue (s) The admission however is not conclusive evidence of the receipt of consideration it is merely *prima facie* evidence of that fact (t) Nor is it evidence against one who is a stranger to the deed (u)

(r) *Raj Mangal* v *Mathura* (1916) 34 All I 4 11 I C 319

(s) *Al Khan Bahadur* v *Indar Parshad* (1896) ?3 Cal 9?0 954 23 I A 9? *Sheo Ratan* v *Abdul Karim* (1889) 9 All W N 142

(t) *Kutba* v *Shankar Das* (1878) Punj Rec No 8 *Wa r Singh* v *Jai Gopal* (1888) Punj Rec No 17 *Gopi Chand* v *Sardar Khan* (1900) Punj Rec L R p 401

(u) *Manohar Singh* v *Su rta Kuar* (1895) I All 4 8 *Kr sna* v *Nagend abala* (19 1) ?? Cal W N 942 66 I C 694 (21) A I L 43? *Ghurphekn* v *Purmeshar Dayal* (1907) ? Cal L J 6?3

Ss. 58–60

Denial of receipt of consideration Denial of receipt of consideration is no ground for refusing registration (t)

Omitting to endorse signature Such an omission is a mere defect in procedure within the meaning of sec 87 and it does not invalidate the registration provided the admission itself is recorded (u)

Sub sec (2) Act 20 of 1866 did not contain any provision corresponding with sub sec (2) In the absence of such a provision it was held that where a person admitting the execution of a document refused to endorse the same as provided by sub sec (1) cl (a) the registering officer had no power to register the document (x) Under sub sec (2) the registering officer has now power to register the document but at the same time to endorse a note of such refusal Failure to comply with the provisions of this sub section is merely a defect in procedure within the meaning of sec 87 and does not vitiate the registration (y)

Endorsements made on an unregistered deed confirmed by a subsequent registered deed An unregistered deed is confirmed by another deed which is registered The former is annexed as a schedule to the latter The endorsements required by this section and secs 59 and 60 are made not on the confirming deed but on the deed confirmed *Held* by the Privy Council that the confirming deed was duly registered (z) See notes to sec 17 Unregistered instrument confirmed by a subsequent registered instrument on p 30 above

Endorsements to be dated and signed by registering officer

59. The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day

Certificate of registration

60. (1) After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied

(t) *In the matter of Brindaban* (1868) 1 Beng L R O C 47, *In the matter of the Petition of Bish Nath* (1876) 1 All 318, 322

(u) *Man Bharti* v *Naunidh* (1881) 4 All 40 44 45

(x) *In the Petition of T Venkata sawmi Naik* (1868) 4 Mad H C 101, 102 103

(y) *S M A R Chetty Firm* v *Ko Teik Ka* (1923) 1 Rang 22, 74 I C 82, (23) A R 176

(z) *Mitchell* v *Mathura Das* (1885) 8 All 6, 9 10, 12 I A 150, reversing *Mathura Das* v *Mitchell* (1882) 4 All 206

S. 60 (2) Such certificate shall be signed sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act and that the facts mentioned in the endorsements referred to in section 59, have occurred as therein mentioned

Earlier Acts—See sec 60 of Act 3 of 1877 and Act 8 of 1871 sec 68 of Act 20 of 1866 and sec 37 of Act 16 of 1864

Local Amendment—See Part XI A sec 70 D (3) (e) below

'Such certificate shall be sealed—The omission to seal is a mere defect in procedure within the meaning of sec 87 below (*a*)

"Shall then be admissible for the purpose of proving'—These words were substituted in section 60 of the Act of 1877 for the words shall then be *prima facie* evidence which occurred in the corresponding *section of the Acts of 1866 and 1871*

Certificate of registration when to be endorsed—The certificate *of registration is to be endorsed after the provisions of secs 34 35 58 and 59* have been complied with (*b*)

Certificate admissible for the purpose of proving that the document has been duly registered in manner provided by this Act—It was at one time held in some cases that a certificate of registration was *conclusive* proof that the document was registered according to law, but this view can no longer be sustained At the same time it is not obligatory upon the Courts in every case where a registered document is relied upon that they should inquire before receiving it in evidence whether the Registrar had properly performed his duty In *Mohammed Fuaz v Brij Lall* (*c*) their Lordships of the Privy Council said It would be a most inconvenient rule if it were to be laid down generally, that all Courts upon the production of a deed which has the registrar s endorsement of due registration should be called on to inquire before receiving it in evidence whether the registrar had properly performed his duty Their Lordships think that this rule ought not to be thus broadly laid down The registration is mainly required for the purpose of giving notoriety to the deed and it is required under the penalty that the deed shall not be given in evidence unless it be registered If it be registered the party who has presented it for

(*a*) *Sita Nath v Bisessur Roy* (1902) 6 Cal. W N 598

(*b*) See *Majid Hossen v Fazlun Nissa* (1880) 16 Cal 468 471 16 I A 19; *Veerappa v Kadiresan* (1913) 24 Mad L.J 664 20 I C 385

(*c*) (1877) 4 I A 166 175 1 All. 456 474 *Gangamoyi Debi v Troylokhya Nath* (1906) 33 Cal 537 544 33 I A 10 *Sheo Shunkur v Hardey Narain* (1881) 6 Cal. 25, 27 28 *Kolumal v Dur Mahomed* (31) A S 78 See also *Meer Usudoollah v Beeby Imaman* (1866) 5 W P P C 26 29 1 M I A 19

registration is then under the Act in a position which *prima facie* at least entitles him to give the deed in evidence. The fact that a document has endorsed on it a certificate of registration is *prima facie* evidence that the requirements of the Act have been complied with, and after such endorsement the burden of proving any act or omission which would invalidate the registration rests on the person who challenges the registration (*d*). Evidence may be led to contradict or to correct a certificate. It was contended that a deed was invalidly presented for registration because the endorsement showed that it had been presented by an agent and no power of attorney was forthcoming. Registration was, however, held to be valid when the sub-registrar gave evidence that it had been presented by the executant (*e*). Again the certificate is not by itself evidence that the person who admitted execution before the registrar was the person who could give title to the party claiming under the document (*f*). See further on this subject the following notes: S. 60

(1) notes to sec. 21, "Whether registration void if description insufficient," on p. 115 above;

(2) notes to sec. 23, "Registration void if document presented after proper time," on p. 123 above,

(3) notes to sec. 28, "Registration void if no part of the property situate within the sub-district," on p. 129 above, and "Fictitious inclusion of property," on p. 130 above,

(4) notes to sec. 32, "Registration invalid if presentation unauthorized," on p. 135 above,

(5) notes to sec. 35.

Certificate admissible for the purpose of proving the facts mentioned in the endorsements.— The certificate is admissible to prove the facts mentioned in the endorsements (*g*), namely, the facts set forth in sec. 52 (1) (a) and sec. 58 (1). See notes to sec. 58, "Signature of person admitting execution," and "Admission of receipt of consideration," on p. 212 above.

Registration no proof of execution.—See notes to sec. 35 under the same head, on p. 149 above.

(*d*) *Mst. Walayet Jan* v. *Jamal Din* (1934) 151 I. C. 462, (34) A. L. 262; *Sudarsana Rao* v. *Seetharam amma* (1933) M. W. N. 1148.

(*e*) *Official Receiver* v. *P. L. K. M. R. M. Chettyar Firm* (1931) 58 I. A. 116, 9 Rang. 171, 131 I. C. 767, (31) A. P.C. 75.

(*f*) *Marutti* v. *Dattu* (1923) 25 Bom. L.R. 192, 72 I. C. 304, (23) A. B. 253.

(*g*) *Thama* v. *Govind Bilal* (1907) 9 Bom. L.R. 401; *Anandibai* v. *Narayan* (1915) 17 Bom. L.R. 49, 27 I. C. 478; *Vishwanath Ramji* v. *Rahibai* (1931) 55 Bom. 103, 128 I.C. 901, (31) A. B. 105.

Ss. 60-62

Registration as affecting genuineness of a deed—The mere circumstances of a deed not being registered is not sufficient by itself to counterbalance the evidence if it is generally satisfactory in proof of the genuineness of the deed (*h*)

Registration as passing title—See notes to sec 47 under the same head on p 165 above

Limitation—The word 'registered' in the Limitation Act, sch I, art 10 refers to the date on which the endorsement 'registered' is made and not the date on which the document was presented for registration (*i*)

Endorsements and certificate to be copied and document returned

61. (1) The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No 1

(2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52

Local Amendment—See Part XI A, sec 70 D (3) (f), below

Registration complete—When the registering officer has complied with sections 60 and 61 the registration is complete These sections make no reference to sections 54 and 55 so that an error in the Index entry will not affect the validity of the registration though it may have an effect on the operation of the registration as notice (*j*)

Procedure on presenting document in language unknown to registering officer

62. (1) When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration office

(*h*) *Baboo Gurgapershad* v *Mowjee Lall* (1871) 16 W R 30 32

(*i*) *Karam* v *Fazl* (1881) Punj Rec No 10 *Bhajan Ram* v *Gopal Ram* (1906) Punj Rec No 92

(*j*) *Sita Ram* v *Raj Narain* (1934) 150 I C 145 (34) A O 283

(2) The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and, for the purpose of making the copies and memoranda required by sections 57, 64, 65 and 66, the translation shall be treated as if it were the original. Ss 62-6

Local Amendment.—See Part XI A, sec 70 D (3) (g), below.

Power to administer oath and record of substance of statements

63. (1) Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

(2) Every such officer may also at his discretion record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and if he admits the correctness of such note, it shall be signed by the registering officer.

(3) Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

OATH.—Oath under sec 3 (36) of the General Clauses Act 1897, includes "affirmation and declaration" in the case of persons by law allowed to affirm or declare instead of swearing. Under sec 6 of the Indian Oaths Act, 1873, an affirmation can be made by a Hindu or Mahomedan or any person who has an objection to making an oath.

(C) *Special Duties of Sub-Registrar*

Procedure where document relates to land in several sub districts

64. Every Sub Registrar on registering a non-testamentary document relating to immoveable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub district any part of such property is situate, and such Sub Registrar shall file the memorandum in his Book No. 1.

Ss. 60–62

Registration as affecting genuineness of a deed—The mere circumstances of a deed not being registered is not sufficient by itself to counterbalance the evidence if it is generally satisfactory in proof of the genuineness of the deed (*h*)

Registration as passing title—See notes to sec 47 under the same head on p 165 above

Limitation—The word registered in the Limitation Act, sch I, art 10 refers to the date on which the endorsement registered' is made and not the date on which the document was presented for registration (*i*)

Endorsements and certificate to be copied and document returned

61. (1) The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No 1

(2) The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52

Local Amendment—See Part XI A sec 70 D (3) (f), below

Registration complete—When the registering officer has complied with sections 60 and 61 the registration is complete These sections make no reference to sections 54 and 55 so that an error in the Index entry will not affect the validity of the registration though it may have an effect on the operation of the registration as notice (*j*)

Procedure on presenting document in language unknown to registering officer

62. (1) When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration office

(*h*) *Baboo Gungapershad* v *Mowjee Lall* (1871) 16 W R 30 32

(*i*) *Karam* v *Fazl* (1881) Punj Rec No 10, *Bhajan Ram* v *Gopal Ram* (1906) Punj Rec No 92

(*j*) *Sita Ram* v *Raj Narain* (1934) 150 I C 145, (34) A O 283

(3) Such Registrar on receiving any such copy shall file it in his Book No 1 and shall also send a memorandum of the copy to each of the Sub Registrars subordinate to him within whose sub-district any part of the property is situate. Ss. 66-68

(4) Every Sub Registrar receiving any memorandum under this section shall file it in his Book No 1

Procedure after registration under section 30 sub section (2

67. On any document being registered under section 30 sub section (2) a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in section 66, sub section (1)

(E) *Of the controlling powers of Registrars and Inspectors General*

Power of Registrars to superintend and control Sub Registrars

68. (1) Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub Registrar is situate

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the rectification of any error regarding the book or the office in which any document has been registered

Registrar cannot cancel registration—This section does not confer upon the Registrar the power of cancelling the registration of documents the execution of which is not denied and which have been already registered by the Sub Registrar Such an order is *ultra vires* and does not affect the validity of the registration (*l*)

Registrar cannot order production of a document after it is registered—The Registrar cannot order the production of a document after it is registered, even for the purpose of satisfying himself that it is correctly stamped (*m*)

(*l*) *Hussain Ali v Sirtir Ali* (33) A L. 786

(*m*) *Thakar Das v Emperor* (1932) 13 Lah 745, 138 I C. 758, (32) A L. 495

S. 69

69. (1) The Inspector General shall exercise a general superintendence over all the registration offices in the territories under the Local Government, and shall have power from time to time to make rules consistent with this Act—

Power of Inspector General to superintend registration offices and make rules

(a) providing for the safe custody of books papers and documents[1] ,

(b) declaring what languages shall be deemed to be commonly used in each district,

(c) declaring what territorial divisions shall be recognized under section 21,

(d) regulating the amount of fines imposed under sections 25 and 34, respectively,

(e) regulating the exercise of the discretion reposed in the registering officer by section 63,

(f) regulating the form in which registering officers are to make memoranda of documents,

(g) regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51,

(h) declaring the particulars to be contained in Indexes Nos I, II, III and IV, respectively,

(i) declaring the holidays that shall be observed in the registration offices, and

(j) generally, regulating the proceedings of the Registrars and Sub-Registrars

(2) The rules so made shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official Gazette, and on publication shall have effect as if enacted in this Act

1 The words "and also for the destruction of such books papers and documents as need no longer be kept" were repealed by sec 6 and Sch of the Destruction of Records Act, 1917 (5 of 1917)

Local Amendments This section has been amended in its application to the Presidency of Bombay by sec 11 of the Indian Registration (Bombay Amendment) Act 5 of 1929 which came into force on the 22nd May 1929 The amendment is as follows Ss. 69, 70

> In clause (h) of sub-section (1) of section 69 of the said Act [the Indian Registration Act 1908] after the figures "I" and "II" the figures "IA" and "IIA" respectively shall be inserted

The section has also been amended in its application to the Presidency of Bombay, by sec 2 of the Indian Registration (Bombay Amendment) Act 17 of 1930 which came into force on the 4th September 1930 The amendment is as follows

> "After clause (g) of sub-section (1) of section 69 of the Indian Registration Act 1908 hereinafter called the said Act the following clause shall be inserted, namely
>
> '(g2) regulating the procedure for transmitting documents for being photographed and the serial numbering binding and preservation of the photographic prints and negatives

The section has been further amended, in its application to the Presidency of Bombay by sec 2 of the Indian Registration (Bombay Amendment) Act XVIII of 1933, which came into force on the 18th October 1933 The amendment is as follows —

> " To clause
> tion Act
> inafter
>
> and the manner of fixing the signature and seal of the Photo Registrar at the end of a length of film ' "

" To make rules "—Under sec 21 of the General Clauses Act, 1897, a power to make rules includes the power to add to, amend, vary or rescind Under sec 24 of the same Act rules made under a previous Registration Act, so far as they are not inconsistent with the existing Registration Act, continue in force until superseded by any rules under this Act

70. The Inspector-General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 25 or section 34, and the amount of the proper registration fee

Power of Inspector General to remit fines

S. 70

PART XI-A

Of the Copying of Documents by means of Photography

Note—**This Part has been inserted by sec 3 of the Indian Registration (Bombay Amendment) Act, 17 of 1930, which came into force on the 4th September 1930. This Part applies only to the Presidency of Bombay.**

PART XI-A

OF THE COPYING OF DOCUMENTS BY MEANS OF PHOTOGRAPHY

Application of this part

70 *A* *This Part shall apply to the areas only in respect of which a notification is issued by the Local Government under section 70 C*

Definition

70-*B* *For the purposes of this Part 'Photo Registrar' means any person appointed by the Local Government to perform the duties of Photo-Registrar under this Part*

Provided that the Local Government may delegate subject to such restrictions and conditions as it thinks fit, to the Inspector-General of Registration the power of appointing Photo Registrars

Documents may be photographed in areas notified by Government

70 *C* (1) *The Local Government may, by notification in the Bombay Government Gazette, direct that in any district or sub district specified in the notification copies of documents admitted to registration under this Act shall be made by means of photography*

(2) *On the issue of such notification it shall be translated into the vernacular of the district and shall be posted in a conspicuous place at the Registration offices affected by the notification*

Application of Act to areas notified under section 70 C

70 *D* *In any district or sub district in respect of which a notification has been issued under section 70 C the provisions of this Act shall, for the purposes of this Part, be subject to the following modifications, namely* —

(1) (*a*) *every document admitted to registration under section 35 or section 41 shall be carefully marked with an identification stamp and the serial number of the document on every page*

(b) It shall then be transmitted by the registering officer to the Photo Registrar, who shall cause, each side of each page of such document together with all stamps, endorsements, seals, signatures, thumb impressions and certificates appearing thereon to be photographed without subtraction or alteration. He may for this purpose cut or untie, without breaking any seals, the thread or ribbon wherewith the pages of the document are sewn together in order to separate the pages of the document and as soon as the document has been photographed he shall rebind the document exactly as before and if he has cut the thread or ribbon shall seal it over the joint with his seal. S. 70

Provided that before transmission of the document to the Photo Registrar the party presenting the document may require the registering officer to have it copied by hand under section 52 on payment of an additional copying fee.

(c) There shall then be prepared and preserved the negative and at least one photographic print and to each such negative and print the Photo-Registrar shall fix his signature and seal in token of the exact correspondence of the copy to the original document as admitted for registration.

[1][*Provided that when more than one such negative is recorded on one length of film and the Photo-Registrar has affixed his signature and seal at the end of such length of film certifying in the manner prescribed by rules made in this behalf, the exact correspondence of all copies on such length of*
shall be (
such nega

(d) One set of such prints arranged in the order of their serial numbers shall be made up into books and sewn or bound together. To each such book the Registrar or Sub-Registrar shall prefix a certificate of the serial numbers it contains, and the books shall then be preserved in the records of the Sub Registrar. The negatives shall be preserved in such suitable place as the Inspector General may prescribe.

1 Amended by sec 3 of Bombay Act XVIII of 1933 which came into force on the 18th October 1933

S. 70

PART XI A

Of the Copying of Documents by means of Photography

Note—**This Part has been inserted by sec. 3 of the Indian Registration (Bombay Amendment) Act, 17 of 1930, which came into force on the 4th September 1930 This Part applies only to the Presidency of Bombay.**

PART XI A

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(1) (*a*) *every document admitted to registration under section 35 or section 41 shall be carefully marked with an identification stamp and the serial number of the document on every page*

PART XII.

Of Refusal to Register.

Ss 71, 72

Reasons for refusal to be recorded

71. (1) Every Sub Registrar refusing to register a document except on the ground that the property to which it relates is not situate within his sub district shall make an order of refusal and record his reasons for such order in his Book No 2 and endorse the words "registration refused" on the document and on application made by any person executing or claiming under the document shall without payment and unnecessary delay give him a copy of the reasons so recorded

(2) No registering officer shall accept for registration a document *so endorsed unless and until* under the provisions hereinafter contained, the document is directed to be registered

Earlier Acts—See sec 71 of Act 3 of 1877 and Act 8 of 1871 sec 82 of Act 20 of 1866 and sec 66 of Act 16 of 1864

Appeal to Registrar from orders of Sub Registrar refusing registration on ground other than denial of execution

72. (1) Except where the refusal is made on the ground of denial of execution an appeal shall lie against an order of a Sub Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order, and the Registrar may reverse or alter such order

(2) If the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60 and such registration shall take effect as if the document had been registered when it was first duly presented for registration

Ss. 72, 73

Earlier Acts.—See sec 72 of Act 3 of 1877 and Act 8 of 1871 ; sec. 83 of Act 20 of 1886 , and sec 62 of Act 16 of 1864

Scope of secs. 72-77.—This section provides for an *appeal* to a Registrar from orders of sub registrars refusing registration on a *ground other than denial of execution* Sec 73 provides for an *application* to a Registrar where a sub registrar refuses to register *on the ground of denial of execution* Sec 76 applies to orders of refusal by a Registrar made under sec 72 as well as under sec 75 Sec 77 provides for a suit if the Registrar refuses to order a document to be registered

Ground other than denial of execution.—This may be non-compliance with the provisions of secs 21 22 [description of property], or of Part IV [time of presentation], or of Part V [place of presentation], or of Part VI [presenting documents for registration], or it may be failure to pay the fine imposed under sec 25 in due time (*n*), or failure to pay the registration fee, or it may be the non appearance of the executing party (*o*) or of the heirs of the deceased executant (*p*), or any ground other than denial of execution

All decisions under this heading have been considered in the notes under the appropriate sections

Appeal after thirty days.—See notes to sec 73, " Application to be made within thirty days, after the making of the order of refusal," on p 257 below.

Application to Registrar where Sub Registrar refuses to register on ground of denial of execution

73. (1) When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be

(*n*) *Umesh Chandra* v. *Nistarini Basu* (1919) 24 Cal. W. N. 304, 54 I C. 562.

(*o*) *Sivarama* v. *V. Krishna* (1914) 26 Mad L. J. 307, 23 I C 23

(*p*) *Hayat Ali* v. *Muhammad* (1912) 9 All. L. J 756, 16 I.C. 97.

verified by the applicant in manner required by law for the verification of plaints S. 73

Earlier Acts—See sec 73 of Act 3 of 1877, secs 73, 74 and 75 of Act 8 of 1871, and sec 84 of Act 20 of 1866 There was no such provision in Act 16 of 1864

Ground of denial of execution—As to what is denial of execution, see notes to sec 35 "Denial of execution" on p 150 above and notes to sec 36 The mere fact that an application is wrongly headed as an appeal and an erroneous section of the statute is mentioned therein is immaterial, if in fact and in law it is an application under sec 73 of the Act (*q*)

"Person claiming under such document"—A deed of sale is signed by the vendor alone It recites that the vendor has received the purchase money The deed is presented for registration by the vendor The purchaser denies the contract of sale Is the vendor entitled to apply under this section for an order for the registration of the deed? It has been held by a majority of the Full Bench of the Allahabad High Court that he is not, for though he is a person executing the deed he is not a person *claiming* under the deed within the meaning of this section The privilege of applying under this section is accorded only to a person *claiming* under the document (*r*)

Application to be made within thirty days after the making of the order of refusal—An application to the Registrar under this section must be made within thirty days from the date of the sub registrar's order of refusal If the application is not made within thirty days the Registrar has no jurisdiction to make any inquiry whatever he must reject the application *in limine* (*s*) In computing the period of thirty days the applicant is not entitled to the exclusion of the time necessary for obtaining a copy of the sub registrar's reasons for refusal to register (*t*)

As regards the starting point of the period of thirty days there is a distinction between the case where the order of refusal is made in the presence of the party and the case where it is made in his absence and without notice to him If the order is made in the presence of the party, the period of thirty days is to be counted from the date when it was made Where it is made in the absence of the party, the period is to be counted from the date when the order was made if notice of the date of the hearing of the

(*q*) *Uttam Singh* v *Ruttan Devi* (1923) 5 Lah. L J 217 74 I C 688 (1924) A L 28

(*r*) *In the matter of the Petition of Bish Nath* (1876) 1 All. 318 322

(*s*) *Edun* v *Mahomed* (1883) 9 Cal 150, *Kunhimmu* v *Viyyathamma* (1884) 7 Mad. 535, *Udit* v *Imam Bandi* (1902) 24 All 402 415

(*t*) 24 All 402 404 *supra*

Ss. 72, 73

Earlier Acts —See sec 72 of Act 3 of 1877 and Act 8 of 1871, sec 63 of Act 20 of 1886 and sec 62 of Act 16 of 1864

Scope of secs 72-77 —This section provides for an *appeal* to a Registrar from orders of sub registrars refusing registration on a *ground other than denial of execution* Sec 73 provides for an *application* to a Registrar where a sub registrar refuses to register *on the ground of denial of execution* Sec 76 applies to orders of refusal by a Registrar made under sec 72 as well as under sec 75 Sec 77 provides for a suit if the Registrar refuses to order a document to be registered

Ground other than denial of execution —This may be non compliance with the provisions of secs 21 22 [description of property] or of Part IV [time of presentation] or of Part V [place of presentation] or of Part VI [presenting documents for registration] or it may be failure to pay the fine imposed under sec 25 in due time (*n*) or failure to pay the registration fee or it may be the non appearance of the executing party (*o*) or of the heirs of the deceased executant (*p*) or any ground other than denial of execution

All decisions under this heading have been considered in the notes under the appropriate sections

Appeal after thirty days —See notes to sec 73 Application to be made within thirty days after the making of the order of refusal on p 257 below

73. (1) When a Sub Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution, any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub Registrar is subordinate in order to establish his right to have the document registered

Application to Registrar where Sub Registrar refuses to register on ground of denial of execution

(2) Such application shall be in writing and shall be accompanied by a copy of the reasons recorded under section 71, and the statements in the application shall be

(*n*) *Umesh Chandra* v *Nistarini Lasu* (1919) 24 Cal W N 304 54 I C 562

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verified by the applicant in manner required by law for the verification of plaints S. 73

Earlier Acts—See sec 73 of Act 3 of 1877, secs 73, 74 and 75 of Act 8 of 1871, and sec 84 of Act 20 of 1866 There was no such provision in Act 16 of 1864

Ground of denial of execution—As to what is denial of execution, see notes to sec 35 'Denial of execution' on p 150 above and notes to sec 36 The mere fact that an application is wrongly headed as an appeal and an erroneous section of the statute is mentioned therein is immaterial, if in fact and in law it is an application under sec 73 of the Act (q)

"Person claiming under such document—A deed of sale is signed by the vendor alone It recites that the vendor has received the purchase money The deed is presented for registration by the vendor The purchaser denies the contract of sale Is the vendor entitled to apply under this section for an order for the registration of the deed? It has been held by a majority of the Full Bench of the Allahabad High Court that he is not, for though he is a person executing the deed he is not a person *claiming* under the deed within the meaning of this section The privilege of applying under this section is accorded only to a person *claiming* under the document (r)

Application to be made within thirty days after the making of the order of refusal—An application to the Registrar under this section must be made within thirty days from the date of the sub registrar's order of refusal If the application is not made within thirty days the Registrar has no jurisdiction to make any inquiry whatever he must reject the application *in limine* (s) In computing the period of thirty days the applicant is not entitled to the exclusion of the time necessary for obtaining a copy of the sub registrar's reasons for refusal to register (t)

As regards the starting point of the period of thirty days there is a distinction between the case where the order of refusal is made in the presence of the party and the case where it is made in his absence and without notice to him If the order is made in the presence of the party, the period of thirty days is to be counted from the date when it was made Where it is made in the absence of the party, the period is to be counted from the date when the order was made if notice of the date of the hearing of the

(q) *Uttam Singh v Ruttan Devi* (1923) 5 Lah. L J 217 74 I C 688 (24) A L 28

(r) *In the matter of the Petition of Bish Nath* (1876) 1 All 318 322

(s) *Edun v Mahomed* (1883) 9 Cal 150 *Kunhimmu v Viyyathami* (1884) 7 Mad 535 *Udit v Imam Bandi* (1902) 24 All 402 415

(t) 24 All 402, 404 *supra*

Ss 73, 74 application was given to him but if no notice was given the period runs from the date when the order is communicated to the party (u)

An application under this section is not a presentation under sec 32 and it has been said that it may be made by post (v) A minor married woman may by a power of attorney authorize an agent to apply under this section (w) Such a power is valid under sec 5 of the Power of Attorney Act 7 of 1882

Procedure of Registrar on such application

74. In such case, and also where such denial as afore said is made before a Registrar in respect of a document presented for registration to him the Registrar shall, as soon as conveniently may be enquire—

(a) whether the document has been executed ,

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be so as to entitle the document to registration

Earlier Acts—See sec 74 of Act 3 of 1877 sec 76 of Act 8 of 1871 and sec 84 of Act 20 of 1866 There was no such provision in Act 16 of 1864 Under the Acts of 1866 and 1871 the inquiry was to be made by the District Court

Denial of execution before Registrar—The non appearance of an executing party in pursuance of a summons issued under sec 75 (4) is equivalent to a denial of execution The denial need not be *in the presence of the Registrar* No doubt the present section speaks of a denial before a Registrar but that may fairly be construed to mean a denial *in a proceeding before a Registrar* as opposed to a proceeding before a sub registrar under sec 35 above (x)

The Registrar shall inquire—The inquiry under this section should be made by the Registrar himself He cannot delegate his power to another not even a sub registrar subordinate to him (y)

Order made by a Registrar under sec 25 cannot be questioned by his successor in office—An order is made by a

(u) *Swaminathan* v *Lakshmanan* (1930) 3 Mal 491 1 3 I C 345 (1930) A M 490 *Abdul Ali* v *Mirza Khan* (1904) 28 Bom 8

(v) *Chinnan* v *Venkayamma* (1933) 64 Mal L J 637 145 I C 765 (1933) A M 407

(w) 64 Mal L J 637 *supra*

(x) *In re Shaik Abdul Aziz* (1887) 11 Bom 691 697

(y) *Mata Dayal* v *Queen Empress* (1897) 24 Cal 735

Registrar under sec 25 directing that a deed of sale presented by the purchaser for registration after the expiration of four months should be registered on payment of a prescribed fine The fine is paid, but the vendor refuses to admit execution, and the sub registrar thereupon refuses to register the deed The purchaser then makes an application under sec 73 The successor in office of the Registrar holds that the deed is duly executed, but refuses to direct the registration of the document on the ground that the deed was not presented for registration within the time allowed by law The refusal is improper, for having found that the deed had been executed [see cl (a)] and that the requirements of the law had been complied with—for the delay was condoned and the fine paid [see cl (b)], he ought to have ordered the deed to be registered under sec 75 (1) It was not competent to him to go behind the order of his predecessor (z)

Ss. 74, 75

Whether a Registrar can review his own order—A Registrar has no power to review his own order This follows from the decision of the Calcutta High Court in the under mentioned case (a), which was approved by a Full Bench of the same High Court (b) A Registrar can, however, revive an application which may have been dismissed by reason of the non-appearance or other default of the applicant (c)

Depositions recorded during an inquiry under this section—It has been held that depositions recorded by a Registrar during an inquiry under this section are admissible under sec 33 of the Evidence Act, if the other conditions laid down in that section are satisfied (d) See sec 75 (4) and notes to sec 41, 'That the will was executed, on p 160 above

75. (1) If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered

Order by Registrar to register and procedure thereon

(2) If the document is duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60

(z) *Durga Singh* v *Mathura Das* (1884) 6 All 460

(a) *Abdul Karim* v *Latifunnessa* (1903) 30 Cal. 532 It should be noted that *Reasut Hossein* v *Hadji Abdoolah* (1876) 3 I A 221, 2 Cal 131, was a decision regarding the power of a District Court to review its order under secs 73 to 76 of the Registration Act, 1871, and not regarding the power of a Registrar to review his own order

(b) *Kalimuddin* v *Sahibuddin* (1919) 24 Cal. W N 4, 54 I C 705 [F B]

(c) *Sheikh Sajid* v *Sarada Prasad* (1913) 17 C W N 585, 18 I C 450

(d) *Jeheto* v *Jaibanessa* (1913) 18 C W N 605 20 I C 661

S. 75 (3) Such registration shall take effect as if the document had been registered when it was first duly presented for registration

(4) The Registrar may, for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence, as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil Procedure, 1908

Earlier Acts—See sec 75 of Act 3 of 1877 sec 76 of Act 8 of 1871 and sec 84 of Act 20 of 1866 There was no such provision in Act 16 of 1864

Whether fresh presentation necessary under sub sec (2)—Where a document is duly presented for registration, but the registration is refused on the ground of denial of execution, and the Registrar on being satisfied on that point orders under sec 75 (1) that the document be registered, the sub registrar could register it under the order without requiring a fresh presentation in the manner required by sec 32, and such registration would take effect as stated in sec 75 (3) All that is meant by sub sec (2) is that the sub registrar *cannot be compelled* to register unless the document is ' duly presented a second time, but there is nothing in the section to prevent the sub registrar from registering a document which has been duly presented and the execution of which has been proved without requiring a repetition of all the original steps (*e*)

"Within thirty days after the making of such order'—A registering officer has no jurisdiction to register a document presented after the lapse of thirty days from the date of the order passed by the Registrar, even if the time for such presentation is extended by the Registrar The Registrar has no power to extend the time and if he does so, his order is *ultra vires* (*f*)

Revision by High Court of Registrar s order—A Registrar is not a ' Court ' within the meaning of sec 115 of the Code of Civil Procedure The High Court, therefore, has no power to interfere with his proceedings under that section (*g*)

(*e*) *Chhotey Lal* v *Collector of Moradabad* (1922) 49 I A 375 44 All 514 69 I C 44 (29) A I C 279 on app from (1918) 40 All 434 45 I C 37

(*f*) *Baban Sahai* v *Udit Narain* (1901) 5 Cal L J 188

(*g*) *Manawala* v *Kumarappa* (1907) 30 Mad 326 *Naganna* v *Pattabhiramayya* (1928) 51 Mad 245, 109 I C 180 (28) A M 475

Reference to High Court by Registrar — A Registrar, though he is invested with certain powers under sub sec (4) "as if he were a Court", is not a Court within the meaning of O 46, r 1, of the Civil Procedure Code, and he cannot therefore make a reference to the High Court under that Order Ss. 75, 76

Order of refusal by Registrar

76. (1) Every Registrar refusing —

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub Registrar or

(b) to direct the registration of a document under section 72 or section 75

shall make an order of refusal and record the reasons for such an order in his Book No 2 and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded

(2) No appeal lies from any order by a Registrar under this section or section 72

Earlier Acts —See sec 76 of Act 3 of 1877 and secs 71 and 76 of Act 8 of 1871 There was no such provision in Act 20 of 1866 or in Act 16 of 1864

Cls (a) and (b) —Cl (a) refers to the case where a document is presented *to the Registrar* for registration and an order is made by him "refusing to register" on the ground of denial of execution (*h*) [see sec 74] Cl (b) refers to cases where an appeal is made to him under sec 72 or an application under sec 73, and an order is made by him *refusing to direct* the sub registrar to register the document See notes under sec 34, "Procedure if delay not condoned," on p 146 above

"Refuse to register"—*There is no distinction between "refuse to register" and "refuse to accept for registration" for the purposes of this section* (*i*)

Order of refusal under sec 76.—Sec 74, no doubt, contemplates an inquiry by the Registrar But where parties do not appear on the date fixed for the inquiry, and the appeal or application is dismissed, the order

(*h*) See *Radhakissen* v *Chooneelall* (1880) 5 Cal 445, 448 and *Kudrathi Begum* v *Najbunnessa* (1898) 25 Cal 93

(*i*) *Maneklal* v *Kasturbhai* (1929) 53 Bom 644, 119 I C 651, ('29) A B 369

Ss 76, 77 of dismissal amounts to an order of refusal within the meaning of this section though no inquiry could be and is held (*g*)

A sub registrar refused to register a document on the ground that the description of the property was insufficient On appeal the Registrar refused to direct registration unless a new deed was executed or a note added to the deed giving a fuller description It was held that the order was one refusing to direct registration within the meaning of this section (*k*) Similarly where a Registrar holds that he had no power to interfere with an order of the Sub Registrar refusing to register a document on the ground that the property transferred by it was not properly described under sec 21 it was held that the Registrar should have considered the appeal on its merits and that the order was tantamount to a refusal to direct registration under sec 72 (*l*)

A sub registrar refused to register a document on the ground of the alleged executant s *failure to appear* in obedience to a summons under sec 36 The other party thereupon moved the Registrar by an application purporting to be under secs 72 and 73 The Registrar treated the application as an appeal under sec 72 and dismissed it on the ground that registration had been refused because of denial of execution and that consequently an appeal under sec 72 was not competent It was held that the dismissal was a refusal under sec 76 and that a suit under sec 77 was competent (*m*)

Suit in case of order of refusal by Registrar

77. (1) Where the Registrar refuses to order the document to be registered under section 72 or section 76, any person claiming under such document or his representative, assign or agent may within thirty days after the making of the order of refusal institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree

(2) The provisions contained in sub sections (2) and (3) of section 75 shall, *mutatis mutandis*, apply to all documents presented for registration in accordance with any such decree

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(*g*) *Sajbullah v Ha i Khosh* (1886) 13 Cal 264 *Surendra Nath v Gopal* (1908) 12 Cal L J 401 *Abdul Hakim v Chandan* (1912) 34 All 16 13 I C 83

(*k*) *Kirpa Ram v Asa Singh* (1917) Punj Rec ? 41 41 I C 76

(*l*) *Hoosein Abdul Rehman v Lachmichand* (1925) 49 Bom 40 at p 68 84 I C 416 (25) A. B 31

(*m*) *Uttam Singh v Ruttan Devi* (1923) 5 Lah. L J 217 74 I C 688 (24) A L 23

and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit. S. 77

Earlier Acts—See sec 77 of Act 3 of 1877, and sec 15 of Act 16 of 1864

Conditions precedent to the institution of a suit under sec. 77.—No suit for a decree directing a document to be registered can lie under this section—

(a) unless the document has been presented for registration within the time prescribed by secs 23 26,

(b) unless the presentation is by a person authorized to do so under sec 32 of the Act (*n*),

(c) unless there has been a refusal by the sub registrar to register,

(d) unless there has been an appeal to the Registrar under sec 72 or an application under sec 73 above (*o*) and such appeal or application is made *within thirty days* from the date of the sub registrar's order of refusal [see notes to sec 73 'Application to be made within thirty days],

(e) unless there has been a refusal by the Registrar to register under sec 76 [see notes to sec 76, Order of refusal under sec 76"] and

(f) unless the suit has been filed within thirty days from the date of the Registrar's order of refusal

The non attendance of the executing party within the period prescribed by sec 34 is not fatal to a suit under this section The reason is that sec 34 is expressly made subject to the provisions of this section One of the most obvious reasons which may make it necessary for any party to come to the Civil Court under sec 77 to compel registration must be his inability to procure the attendance of the party executing before the registering officer" (*p*) Again the omission to enforce the attendance of the executing party before the registering officer by a summons (sec 36) is not fatal to a suit under this section (*q*), nor is the fact that the plaintiff's appeal or application was dismissed by the Registrar for default see notes to sec 76, "Order of refusal under sec 76 on p 261 above

Whether a suit to enforce registration lies independently of this section—Where a person executes a document, but refuses to register

(*n*) *Lalitmoni* v *Akroomoni* (1883) 9 Cal 851 853 per Maclean J

(*o*) *Bhagwan Singh* v *Khuda Bakhsh* (1881) 3 All 397

(*p*) *Sharia Charan Das* v *Joyenooluh* (1885) 11 Cal 750 755, *Hassan* v *Ekambaram* (1895) 5 Mad L J 29, *Ramaswami Chettiar* v *Srinivasa Pillai* (1934) 66 Mad L J 424, 148 I C 94, (34) A M 113

(*q*) *Hayat Ali* v *Muhammad* (1912) 9 All. L J 756, 16 I C 97

S. 77 it, the person in whose favour the document is executed is entitled to establish his right to have the document registered by instituting a suit under this section "for a decree directing the document to be registered" But such a suit, we have seen, will not lie unless the conditions precedent to its institution are complied with, in other words, unless the various steps prescribed by the Act have been taken (see the preceding paragraph) The question is, whether to establish his right to have the document registered, he is bound to bring a suit *under this section* which, as stated above, he cannot do without taking the various steps prescribed by the Act and within the time prescribed by this section, or whether he is entitled, without taking any of these steps, to institute a suit "for a decree directing the document to be registered" *independently* of the provisions of this section It has been held by the High Courts of Bombay (*r*), Madras (*s*) and Rangoon (*t*) that a suit to compel registration, that is, a suit "for a decree directing the document to be registered," is maintainable only under this section, and that independently of this section no such suit will lie A different view has been taken by the High Court of Allahabad According to that Court every agreement for a transfer implies a contract not only to execute the deed of transfer, but to appear before the registering officer and to admit execution in cases where registration is compulsory Where a person, therefore, executes a deed of transfer, but fails to appear before the registering officer and to admit execution, a suit will lie for specific performance of the *implied* contract to register (*u*) unless steps have been taken under the Registration Act for the registration of the deed, and the sub registrar has refused to register the deed (*v*) In the latter case, it has been held, that no such suit will lie because of the express provisions of sec 71 (2) by which it is enacted that "no registering officer shall accept for registration a document so endorsed [that is endorsed 'registration refused'] unless and until *under the provisions hereinafter contained*, the document is directed to be registered" The words, "under the provisions hereinafter contained,' contemplate a reference to the Registrar under sec 72 or

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(*r*) *Hurjivan* v *Jamsetji* (1885) 9 Bom 63 [lease], *In re Shaik Abdul Aziz* (1887) 11 Bom 691, 695

(*s*) *Venkatasami* v *Kristayya* (1893) 16 Mad 341 [transfer of mortgage] *Satyanarayana* v *Chinna Venkata Rao* (1926) 49 Mad 302, (26) A M 530

(*t*) *Maung San Ya* v *Maung San Pe* (1926) 4 Rang 500, 99 I C 998, (27) A. R 83

(*u*) *Ram Ghulam* v *Choley Lal* (1878) 2 All 46 [sale], *Abdullah Khan* v *Janki* (1894) 16 All 303 [lease], *Sibba Khan* v *Ajudhia Singh* (1885) 5 All W. N 329 See also *Kiam-ud Din* v *Rajjo* (1888) 11 All. 13, 15, *Amer Chand* v *Nathu* (1910) 7 All. L. J 308

(*v*) *Bhagwan Singh* v *Khuda Bakhsh* (1881) 3 All. 397 [hypothecation bond] See also *Soornun Butty* v *Boodheasuree* (1868) 10 W. R 313, *In the matter of Suntar Dobey* (1869) 12 W. R 385

sec 73, as the case may be an order of refusal by the Registrar under sec 76, and a suit under sec 77 **S. 77**

If, as held by the Allahabad High Court, a suit lies for specific performance of the implied contract to register, what should be the form of the decree in the suit? In one case (*w*), the decree directed the document to be registered, being a decree similar in form to the one contemplated by the present section But how is such a decree to be executed? What if more than four months or, say, eight months [sec 23] have expired since the date of execution of the document? Further, can a decree in such suit bind the Registrar? This difficulty was felt by the Court in a later Allahabad case (*x*) and the decree suggested was to declare that the plaintiffs "have title as lessees under the *patta* to have registration of that deed *if not barred by the Registration Act* It seems very doubtful whether a declaratory decree of this kind can be passed under sec 42 of the Specific Relief Act, 1877. Further, it would seem, that the document, being unregistered, could not be admitted in evidence in such a suit having regard to sec 49 of the Act, though it would be admissible by virtue of the express provisions of sec 77 if a suit to compel registration were brought under that section This was one of the reasons why the High Courts of Bombay and Madras held that a suit to compel registration is maintainable only under the present section (*y*) Another reason given is that you cannot by a side wind get rid of the period of limitation expressly provided for by this section (*z*)

In Calcutta it has been held that no suit lies to enforce registration independently of this section (*a*) But it has also been held that if a party executing a document refuses to admit execution, it is open to the other party to sue for specific performance of the contract to transfer implied in the document (*b*) The latter decision is no longer law since the decision of the Privy Council in *Skinner* v *Skinner* (*c*), and it was dissented from by the Madras High Court in the under mentioned case (*d*)

Suit for damages for refusal to register—Whether a suit will lie against the maker of an instrument requiring registration for his refusal to appear before the registering officer and to admit execution depends

(*w*) *Ram Ghulam* v *Choley Lal* (1878) 2 All 46

(*x*) *Abdullah Khan* v *Janki* (1894) 16 All 303

(*y*) See also *Fati Chand Sahu* v *Lilambar Singh Das* (1871) 9 Beng L R 433 14 M I A 129 16 W R P C 26

(*z*) See *Satyanarayana* v *China Venkata Rao* (1926) 49 Mad 302, 310, 100 I C 385, (26) A M 530

(*a*) *Edun* v *Mahomed Siddik* (1883) 9 Cal 150

(*b*) *Surendra Nath* v *Gopal Chundar* (1910) 12 Cal L J 464 8 I C 794

(*c*) (1929) 56 I A 363 119 I C 633, ('29) A PC 269

(*d*) *Satyanarayana* v *China Venkata Rao* (1926) 49 Mad 302, 309 310 100 I C 385 ('26) A M 530

S. 77 upon the question whether there is a contract, express or implied, on the part of the maker to register it If there is an express contract to register, a suit will lie for damages (*e*) As regards an implied contract to register, it has been held by the High Court of Allahabad that where a person agrees to transfer his property, there is an implied contract not only to execute a deed of transfer, but to register it But the other High Courts do not hold that view according to those courts, there is no such implied contract, and therefore no breach and no damages for the breach (*f*) See preceding paragraph

Registrar as a party—The Registrar is not a necessary party to a suit under this section (*g*)

Suit where registration is optional—A suit lies to compel registration under this section, whether the registration of the document is compulsory or optional (*h*) See secs 32 and 50

Scope of suit under this section—In a suit brought under this section no claim other than that to have the document registered can be made If other claims are joined the proper course for the Court is to direct an amendment (*i*)

Nature of inquiry under this section—In a suit under this section the Court is only concerned with the genuineness of the document sought to be registered, that is whether the document is executed by the person by whom it is alleged to be executed and not its validity The question of its validity must be determined in a suit properly framed for that purpose (*j*) The Court, therefore, will not go into defences of the following kind namely, that the document was cancelled (*k*), or that the document was executed by the guardian of the property of a minor in disregard of the

(*e*) *Sham Narain* v *Khemajeet* (1868) 12 W R F B H 13

(*f*) *Girdhar* v *Haribhai* (1870) 7 Bom H C A C 3, *Hurjivan* v *Jamsetji* (1885) 9 Bom 63

(*g*) *Radhakissen* v *Chooneeloll* (1880) 5 Cal 445 448, *Wishwambhar* v *Prabhakar* (1884) 8 Bom 269

(*h*) *Topa Bibi* v *Ashanulla* (1889) 16 Cal 509 *Chandra Kishore* v *Dinenda Nath* (1897) 1 Cal. L. J 126

(*i*) *Venkata* v *Veerammal* (1900) 9 Mad L. J 107, *Halim Khadar* v *Khadar Bibi* (1866) 3 Mad H C 149

(*j*) *Palambal* v *Arunachala* (1895) 18 Mad 255, *Raj Lakhi* v *Debendra* (1897) 24 Cal 668, *Broucke* v *Rajah Saheb Mohan* (1909) 14 Cal W N 12 5 I C 20, *Hassan* v *Elambaram* (1895) 5 Mad L. J 29, *Kanhaya Lal* v *Sardar Singh* (1907) 29 All. 284, 287, *Ram Ghulam* v *Mst Menda* (1921) 19 All. L.J 224, 60 I C. 869, (21) A. A 52, *Hazari Mal* v *Kutab ud Din* (1903) Punj Rec No 11, *Nawab* v *Arjan Das* (1904) Punj Rec No 13, *Pemal Das* v *Mst Jannat* (1921) 2 Lah. 202, 203 62 I C. 789, (21) A L. 136, *Prasanna Kumar* v *Mathura Nath* (1870) 15 W R 487, *Dwijendra* v *Jogeschandra* (1924) 39 Cal L.J 40, 79 I.C. 520 (24) A C 600

(*k*) 18 Mad 255, *supra*

terms of the permission granted by the Court (*l*), or that it is void for want of consideration (*m*), or that a power of attorney pursuant to which the document was executed was not explained to the donor of the power (*n*), or that the document was obtained by undue influence (*o*), or whether the document alleged to be tampered with represents the substance of the agreement between the parties (*p*), or whether it is executed under circumstances which would make it operative as against a pardanashin lady (*q*), or whether it was subject to an agreement of reconveyance (*r*)

Suit under this section and res judicata.—Where a party refuses to admit execution on the ground that the document has been materially altered after execution by the other party, and the Court finds in a suit under this section that the document has not been so altered, the finding operates as res judicata in a subsequent suit between the same parties (*s*) According to the view taken by the Allahabad High Court there is an implied contract by the maker of an instrument requiring registration to register it That High Court has, therefore, held that if the executant refuses to appear before the Sub Registrar and admit execution and a suit under sec 77 is unfructuous, the failure of the suit does not operate as res judicata in a subsequent suit for specific performance of the contract by the execution and registration of a fresh deed (*t*)

Withdrawal of suit.—A suit was filed under this section to compel registration, but the suit was premature as it was filed before the Registrar had refused to order the document to be registered The suit was therefore withdrawn and liberty was not reserved to institute a fresh suit Nevertheless after the Registrar refused to order registration a subsequent suit to enforce registration was not barred under O 23, r 1 (3) of the Civil Procedure Code as it was not for the same subject matter (*u*)

Decree under this section.—A Court cannot under this section direct a document to be registered which the Registrar could not A Court under this section could only do what the Registrar could have done (*v*) Thus

(*l*) *Raj Lakhi* v *Debendra* (1897) 24 Cal 668

(*m*) *Hassan* v *Ekambaram* (1895) 5 Mad L J 29

(*n*) *Kanhaya Lal* v *Sardar Singh* (1907) 29 All 284

(*o*) *Pemal Das* v *Mst Jannat* (1921) 2 Lah 202, 62 I C 789, ('21) A L 136, *Prasanna Kumar* v *Mathura Nath* (1870) 15 W R 487 But see *Chandra Kishore* v *Dinendranath* (1897) 1 Cal L J 126

(*p*) *Guruvayya* v *Venkataratnam* (1924) 47 Mad 833 82 I C 483, ('24) A M 810

(*q*) *Abdul Gafur* v *Bodial Haque* (1932) 55 Cal L J 107, 139 I C 234, ('32) A C 588

(*r*) *Ramaswami Chettiar* v *Srinivasa Pillai* (1934) 66 Mad L J 424, 148 I C 94, ('34) A M 113

(*s*) *Dwijendra* v *Jogeschandra* (1924) 39 Cal L J 40, 79 I C 520 ('24) A C 600

(*t*) *Balkishen Das* v *Bechan Pandey* (1932) 54 All 68 136 I C 561, ('32) A A 96

(*u*) *Karam Singh* v *Sardar Singh* (1932) 134 I C 482 ('32) A L 138

(*v*) *Saiyed* v *Muhammad* (1909) 31 All 523, 526, 3 I C 2

S. 77 if the Registrar may not register two documents as one, as where they are not incorporated together, the Court cannot do so under this section (*w*) Nor will a Court under this section direct the registration of a document which is in contravention of the provisions of any Act, *e g*, the Punjab Alienation of Land Act (*x*)

Ex-parte decree.—If a document is registered in pursuance of an ex parte decree and the decree is then set aside it has been held that the registration is automatically cancelled Even if the suit is tried on the merits and the decree confirmed, the document must be presented again for registration within 30 days of the decree on the merits (*y*)

Interference with discretion vested in registering officer.—See following notes —

(1) notes to sec 21, ' Suit under sec 77 " on p 114 above,

(2) notes to sec 25, ' *Finality of Registrar's order,*" on p 126 above,

(3) notes to sec 31, " Special cause," on p 134 above

" Refuses to order the document to be registered under sec 76 '—There is no distinction between "refuse to register" and " refuse to accept for registration' for the purposes of this section (*z*)

Where a Sub-Registrar returned a document presented to him for registration and made an order to the effect that he could neither register nor refuse to register the document, there being no representative of the deceased executant, and the Registrar confirmed the order, it was held that the order of the Registrar was in substance one refusing registration, and that a suit would lie under this section (*a*) See notes to sec 76, " Order of refusal under sec 76," on p 261 above

" Person claiming under such document '—See notes to sec 73 under the same head, on p 257 above

Representative—The real owner is not the representative of a benamidar and has no locus standi to file a suit under this section (*b*) See sec 2 (10) at p 17

" Within thirty days after the making of the order of refusal '—A suit under this section must be instituted within thirty days

(*w*) *Tullockchand v Gokulbhoy* (1897) 21 Bom 724 730

(*x*) *Narain Dass v Sahib Banoo* (1919) 1 Lal L J 212

(*y*) *Qamar Gul Khan v Muhammad Ikram Khan* (1933) 141 I C 384, (33) A Pesh 24

(*z*) *Maneklal v Kasturbhai* (1929) 53 Bom 644, 119 I C 651, (29) A B 365

(*a*) *Burkha Nath v Shiv Ram* (1927) 8 Lah 208, 102 I C 796, (27) A L 395

(*b*) *Selamatulla Chaudhuri v Aktaren nessa* (1931) 58 Cal 691, 133 I C 591, (31) A C 664

after the making of the Registrar's order of refusal (c) As regards the starting point of the period of thirty days there is a distinction between the case where the order of refusal is made in the presence of the party and the case where it is made in his absence and without notice to him If the order is made in the presence of the party the period of thirty days is to be counted from the date when it was made Where it is made in the absence of the party, the period is to be counted from the date when the order was made if notice of the date of the hearing of the application was given to him, but if no notice was given, the period runs from the date when the order is communicated to the party (d) S. 77

An application is made to a Registrar under sec 73 The Registrar refuses to direct the registration of the document The applicant then files an application for review, which is dismissed by the Registrar The period of thirty days is to be calculated from the date of the order of refusal, and not the date of dismissal of the application for review (e)

Where a Registrar refuses to excuse the delay in presenting a document for registration, and the Sub Registrar thereupon refuses to register the document, and an appeal is made to the Registrar under sec 72, and the Registrar refuses to direct registration of the document the period of thirty days is to be counted from the date of the order of refusal on appeal and not the date of the order refusing to excuse the delay (f)

In computing the period of thirty days the day on which the order of refusal was made should be excluded (g)

Whether the general provisions of the Limitation Act apply to suits under this section—It was at one time held by the High Court of Calcutta that the *general* provisions of the Limitation Act are applicable to cases for which periods of limitation are specially provided by local or special laws, and that they applied therefore to suits under the present section (h) It was held accordingly in several cases that the provisions of sec 4 of the Limitation Act by which it is enacted that where the period of limitation prescribed for any suit expires on a day when the Court is closed, the suit may be instituted on the day the Court re opens, applied to suits

(c) *Luckhi Narain* v *Salcowrie* (1889) 16 Cal. 189

(d) *Suaminathan* v *Letchmanan* (1930) 53 Mad 491 123 I C 345 (30) A M 490, *Abdul Ali* v *Mirja Khan* (1901) 28 Bom 8, *Kirpa Ram* v *Asa Singh* (1917) Punj Rec No 41, 41 I.C 76

(e) *Abdul Hakim* v *Latifunnessa* (1903) 30 Cal. 532, approved in *Kalim uddin* v *Sahibuddin* (1919) 47 Cal. 300 54 I C 705 But see *Sheikh Sajed* v *Sarada Prosad* (1913) 18 Cal L J 45, 18 I C 450 where the order reviewed was one of dismissal for default

(f) *Gangadara* v *Sambasiva* (1917) 40 Mad 759 40 I C 192

(g) *Venkataramachandra* v *Veeramma* (1899) 9 Mad L.J 107

(h) *Nyabutoolla* v *Wazir Ali* (1882) 8 Cal 910

S. 77 under this section (i) It was also held in one case (j), that sec 14 of the Limitation Act which provides for cases in which plaintiffs in good faith, but under mistake, institute proceedings in a Court not having jurisdiction in the matter, applied also to suits under this section, but this decision was dissented from in later cases (k) The same point arose again in a recent case, and it was referred to a Full Bench The Full Bench (l) held that the general provisions of the Limitation Act did not apply to suits under this section, with the result that neither sec 14 of that Act nor sec 4 applies to these suits But they held that the decisions in the cases in which it was held that sec 4 applied could be supported on the general principle recognized in sec 10 of the General Clauses Act 10 of 1897, namely, that where by an Act any proceeding is directed to be taken within a prescribed period, then if the Court is closed on the last day of the prescribed period, the proceeding shall be considered as taken in due time if it is taken on the next day thereafter on which the Court is open (m) This, in fact, *was the view taken in some of the cases on the point decided prior to* the Full Bench case (n)

As regards the Madras High Court, it was held by a Full Bench of that Court as far back as 1895 that the general provisions of the Limitation Act do not apply to suits under this section (o) It was accordingly held in that case that sec 6 of the Limitation Act relating to minority and other legal disability does not apply to a suit under the present section, and that a suit to enforce registration, though it be by a minor must be brought within the period prescribed by this section The principle laid down in the Full Bench case was followed in a later case (p) where it was held that sec 4 of the Limitation Act did not apply to suits under the present section In a still later case (q), however, the Court held that though sec 4 did not apply, the general principle recognized in sec 10 of the General Clauses Act applied

The Allahabad High Court has held that sec 4 of the Limitation Act applies to suits under the present section (r)

(i) *Nyabutolla* v *Ha ir Ali* (1882) 8 Cal. 910, *Surendra Nath* v *Gopal Chunder* (1908) 12 Cal. L. J 464, *Matabbar* v *Sasi Bhusan* (1911) 16 Cal. W N 20, 12 I C 33, *Ibal Baksh* v *Sheikh Babar Ali* (1912) 16 Cal W N 721, 14 I C 173

(j) *Khettur Mohun* v *Dinabashy* (1884) 10 Cal. 265

(k) *Abdul Halim* v *Latfunnessa* (1903) 30 Cal. 532, *Khagendra* v *Ba ...rani* (1919) 24 Cal. W N 29, 54 I C 228

(l) *Kalimuddin* v *Sahibuddin* (1919) 47 Cal 300, 54 I C 705 [F B]

(m) 47 Cal. 300, 323 329 330, 54 I C 705 *supra*

(n) See 12 Cal. L.J 464 and 16 Cal. W N 721 14 I C 173 *supra*

(o) *Veeramma* v *Abbiah* (1895) 18 Mad 99 [F B].

(p) *Appa Rau* v *Krishnamurthi* (1897) 20 Mad 249

(q) *Sivarama* v *V Krishna* (1914) 26 Mad L.J 307, 23 I C 23

(r) *Suraj* v *Thomas* (1906) 28 All. 48

The Chief Court of the Punjab has held, following the earlier decisions of the Calcutta High Court, that the general provisions of the Limitation Act apply to suits under the present section (s) S. 77

Court.—The suit must be brought in the Court of the lowest competent jurisdiction (t)

Valuation for purposes of jurisdiction—See the undermentioned cases (u)

Court-fee—The Court fee payable on a plaint and a memorandum of appeal from a decree in a suit under this section is a fixed fee of Rs 10 only, and not an *ad valorem* fee upon the value of the properties comprised in the document (v)

Document to be presented for registration within thirty days after the passing of the decree—The period of thirty days is to be reckoned not from the date on which judgment is pronounced, but from the date on which the decree is actually signed by the Judge (w)

A obtains a decree against *B* directing a deed to be registered *if presented within thirty days after the passing of the decree* *A* does not present the document within the thirty days *B* appeals from the decree, and the decree is reversed by the appellate Court *A* then appeals from the decree of the lower appellate Court The appeal will not be heard, for even if the appeal were allowed, the document could not be registered, the period prescribed by the decree of the Court of first instance having expired (x)

The prayer of a plaint in a suit under this section should be "for a decree directing the document to be registered *if it be duly presented for registration within thirty days after the passing of such decree*" Suppose that the prayer sets out these words, but the decree does not, in other words, the decree does not specify the period for presentation Or suppose that neither the prayer of the plaint nor the decree sets out these words Has a registering officer jurisdiction in either case to register the document under the decree after the expiration of thirty days from the date of the decree? It has been held by the High Court of Calcutta that he has, the reason given

(s) *Asgahya* v *Balu Mal* (1890) Punj Rec No 74 [F B]

(t) *Wishuambhar* v *Perabhakar* (1884) 8 Bom 269

(u) *Rama* v *Sankara* (1907) 31 Mad 89 [F B], *Golam Palaman* v *Sm Sabeljan* (1926) 53 Cal 1023 97 I C 762, (26) A C 1091, *Deri Dutta* v *Ahmed Khan* (1896) Punj Rec No 43, *Mahomed* v *Mst Fatima* (1895) Punj Rec No 21

(v) *Jantoo* v *Radha* (1882) 8 Cal 515 [appeal], *Mahomed* v *Mst Fatima* (1895) Punj Rec No 21 [suit], *Savarimuthu* v *Alagiam* (1902) 12 Mad L J 88 *Rama* v *Sankara* (1908) 31 Mad. 89 [F B]

(w) *Muthia Chetti* v *Suppan Servai* (1915) 38 Mad 291 20 I C 914

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(l) *Kalimuddin* v *Sahibuddin* (1919) 47 Cal 300 54 I C 705 [F B].

(m) 47 Cal. 300 323 329 330 54 I C 705 *supra*

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Valuation for purposes of jurisdiction—See the undermentioned cases (*u*)

Court-fee.—The Court fee payable on a plaint and a memorandum of appeal from a decree in a suit under this section is a fixed fee of Rs 10 only, and not an *ad valorem* fee upon the value of the properties comprised in the document (*v*)

Document to be presented for registration within thirty days after the passing of the decree—The period of thirty days is to be reckoned not from the date on which judgment is pronounced, but from the date on which the decree is actually signed by the Judge (*w*)

A obtains a decree against *B* directing a deed to be registered *if presented within thirty days after the passing of the decree* *A* does not present the document within the thirty days *B* appeals from the decree, and the decree is reversed by the appellate Court *A* then appeals from the decree of the lower appellate Court The appeal will not be heard, for even if the appeal were allowed, the document could not be registered, the period prescribed by the decree of the Court of first instance having expired (*x*)

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(*w*) *Muthia Chetti* v *Suppan Servai* (1915) 38 Mad 291 20 I C 914

(*x*) *Abdul Halim* v *Ghulam Mian* (1887) Punj Rec No 70 *Duda Mal* v *Faqir* (1888) Punj Rec No 120

S 77 being that there is no positive enactment in the section that the document must be presented for registration within thirty days of the passing of the decree (y) On the other hand it has been held by the High Court of Patna, relying on sub sec (2) of the present section and sec 75 sub secs (2) and (3) that the registering officer has no jurisdiction to register the document if it is not presented within thirty days from the date of the decree of the Civil Court ( ) The latter decision it is submitted is correct

Appeal —An appeal lies from a decree passed in a suit under this section (*a*) An appeal will lie even if the document has been registered pursuant to the decree before the appeal is filed (*b*) If a decree is passed directing registration the appellate Court may make an order directing a stay of execution (*c*)

Presenting of document for registration within thirty days after the passing of the decree — Decree in this section means a final decree Therefore if an appeal is filed from a decree the document may be presented for registration within thirty days from the date of the decree of the appellate Court (*d*)

(*y*) *Gopinath* v *Gadahar* (1906) 33 Cal 10 0 10_?

( ) *Mirza* v *Sr charan Das* (19 ?) 1 Pat 146 69 I C 198 (22) A P 408

(*a*) *Wishwambhar* v *Prabhakarbhat* (1884) 8 Bom ?69

(*b*) *Devi Dutta* v *Ahmad Khan* (1896) Punj Rec No 43

(*c*) *Pa nasi bba* v *Dorai Raj* (1924) 47 Mad L J 73? 8? I C 192 (?5) A M 401

(*d*) (19?4) 47 Mad L J ?3? 8? I C 19? (2?) A M 401 *supra*

PART XIII.

Of the Fees for Registration, Searches and Copies.

Fees to be fixed by Local Government

Ss. 78–80

78. The Local Government shall prepare a table of fees payable—

(a) for the registration of documents,

(b) for searching the registers,

(c) for making or granting copies of reasons, entries or documents, before on or after registration,

and of extra or additional fees payable—

(d) for every registration under section 30,

(e) for the issue of commissions,

(f) for filing translations,

(g) for attending at private residences,

(h) for the safe custody and return of documents, and

(i) for such other matters as appear to the Local Government necessary to effect the purposes of this Act

Shall prepare.– The table so prepared can be altered by the Local Government under sec 21 of the General Clauses Act

Publication of fees

79. A table of the fees so payable shall be published in the Official Gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration office

Fees payable on presentation

80. All fees for the registration of documents under this Act shall be payable on the presentation of such documents

PART XIV.

Of Penalties.

Ss. 81, 82

Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure

81. Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause, injury as defined in the Indian Penal Code, to any person, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

Earlier Acts—See sec 81 of Act 3 of 1877, sec 79 of Act 8 of 1871; and sec 90 of Act 20 of 1866

Scope of the section.—This section prescribes a penalty for false endorsements, etc, made by registering officers and persons employed in their office

"Injury."—See Indian Penal Code, sec 44

False endorsements—See the undermentioned case (e)

Penalty for making false statements, delivering false copies or translations false personation, and abetment.

82. Whoever—

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act; or

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; or

(e) *Queen v. Dwarkanath* (1873) 20 W. R. Cr Rul. 49

(c) falsely personates another and in such assumed character presents any document or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act or S. 82

(d) abets anything made punishable by this Act,

shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both

Earlier Acts—See sec 82 of Act 3 of 1877 sec 80 of Act 8 of 1871, secs 91, 92, 93 and 94 of Act 20 of 1866 and sec 70 of Act 16 of 1864

Permission to prosecute for offences under sec 82—See notes to sec 83 below

Sanction to prosecute for offences mentioned in sec 195 of the Criminal Procedure Code—There is a conflict of opinion whether a registering officer is a Court within the meaning of sec 195 of the Code of Criminal Procedure It has been held by the High Courts of Bombay (*f*) and Allahabad (*g*) that he is not On the other hand it has been held by the High Court of Madras that a Registrar acting under the provisions of secs 72 75 of the Registration Act is a Court within the meaning of sec 195 of the Code of Criminal Procedure (*h*) The same Court has also held that a sub registrar acting under sec 41 of the Act is a Court (*i*) though a sub registrar acting under secs 34 and 53 of the Act is not (*j*) The Madras High Court relies principally in support of its view on the words as if he were a *Civil Court* which occur in sec 75 *sub sec* (1) and the definition of Court in sec 3 of the Indian Evidence Act 1872 and holds that the functions exercised by a Registrar under secs 72 to 75 are not merely administrative, but judicial As to this the Bombay and Allahabad High Courts say that the definition of Court given in the Evidence Act is framed only for the purposes of that Act and that the expression Court in sec 195 of the Criminal Procedure Code is not to be interpreted by the definition in the Evidence Act, that the Registrar, even if he takes evidence does so *not as a Court* but *as if he were a Court* and that the inquiry whether before him or a sub registrar is administrative as distinguished from judicial This view, it is submitted is correct and it derives support from the language of sub secs (1) and (3) of sec 84 of this Act

(*f*) *Queen Empress* v *Tulja* (1888) 12 Bom 36
(*g*) *Queen Empress* v *Ram Lal* (1893) 15 All 141
(*h*) *Atchayya* v *Gangayya* (1892) 15 Mad 138 [F B]
(*i*) *In re Venkatachala* (1887) 10 Mad. 154
(*j*) *Queen Empress* v *Ramaya* (1893) 4 Mad L J 189

PART XIV.

Of Penalties.

Ss. 81, 82

Penalty for incorrectly endorsing copying translating or registering documents with intent to injure

81. Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause, injury as defined in the Indian Penal Code, to any person, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both

Earlier Acts —See sec 81 of Act 3 of 1877, sec 79 of Act 8 of 1871, and sec 90 of Act 20 of 1866

Scope of the section —This section prescribes a penalty for false endorsements etc, made by registering officers and persons employed in their office

'Injury —See Indian Penal Code sec 44

False endorsements —See the undermentioned case (e)

Penalty for making false statements delivering false copies or translations false personation and abetment.

82. Whoever—

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act, or

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan, or

(e) *Queen v Dwarkanath* (1873) 20 W R Cr Rul. 49

Ss. 82-84

Act (...) I [illegible] ... of ... 82 (c) [illegible] ... want of sanction the accused [illegible] ... of this Act ( )

83. (1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Branch Inspector General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

Registering officer may commence prosecutions.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.

Earlier Acts — See sec. 83 of Act 3 of 1877, sec. 81 of Act 8 of 1871, and sec. [illegible] of Act [illegible].

Permission to prosecute — There is a conflict of decisions as to whether the permission referred to in this section is a condition precedent to the prosecution of a person for an offence mentioned in sec. 82. It has been held by the High Court of Calcutta that it is not (t). According to that Court, "the provisions of sec. 83 are *not obligatory*. They rather seem to be intended for the purpose of enabling the officers of the Registration Department, when they should see fit, to institute any prosecution under the Act upon their own responsibility." The High Courts of Allahabad (u) and Rangoon (v) have held that it is. According to that Court the provisions of sec. 83 are obligatory. The Madras High Court has held that no such permission is necessary if the prosecution is by a private person (w).

84. (1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Registering officers to be deemed public servants.

(r) *Moung San v. King Emperor* (1923) 1 Rang. 299, 76 I.C. 431, (24) A.R. 213.

(s) *Moniajuddin v. Emperor* (1933) 143 I.C. 15, (33) A.C. 481.

(t) *Gopi Nath v. Kuldip Singh* (1885) 11 Cal. 566 [F.B.].

(u) *Emperor v. Husain Khan* (1916) 38 All. 354, 36 I.C. 145, *Emperor v. Husain Khan* (1917) 39 All. 293, 39 I.C. 690, *Emperor v. Mahomed Mehdi* (34) A.A. 963 [F.B.].

(v) *Nga Pan Gaing v. King Emperor* (1924) 1 Rang. 299, 76 I.C. 431, (24) A.R. 213.

(w) *In re Palani Goundan* (1921) 40 Mad. L.J. 211, 62 I.C. 582, (21) A.M. 140; *Re Nadathi* (1917) 40 Mad. 880, 38 I.C. 976.

S. 82

Criminal revision—A Registrar is not an "inferior Criminal Court" within the meaning of sec 435 of the Code of Criminal Procedure Hence an order passed by him granting sanction for prosecution cannot be revised by the High Court under that section (*k*)

Stay of criminal proceedings pending civil suit—In the undermentioned cases (*l*) criminal proceedings under this section were stayed pending the disposal of a civil suit brought under sec 77 or otherwise in respect of the same document

Cl (a)—"Makes any false statement"—The false statement to be punishable must have been made before an officer *acting* in execution of this Act It is no offence to make a false statement before an officer *purporting to act* in execution of the Act but not legally authorized to do so Whether the inquiry be under sec 72 of the Act or under sec 74 it must be held by the Registrar himself He cannot delegate his power to another If he does so and if a false statement be made to such other person, such statement does not amount to an offence under this section (*m*) Further, the false statement must have been made in an inquiry under the Act The inquiry under the Act must be one as to the *execution* of the document Hence if a registering officer questions a person as to the *circumstances in which a document* was executed and if false answers are given, it does not constitute an offence under this section (*n*) It is no defence to a prosecution under this section that the inquiry in which the false statement was made was held under sec 72 instead of under sec 74, provided no objection was taken before the Registrar to the form of the proceedings (*o*)

Cl (c)—"Falsely personates another."—Neither fraud nor dishonesty is an essential ingredient to constitute the offence of false personation under this clause (*p*) On a charge under this clause, it is not improper for the Court to take finger prints of the accused in its presence and to have them compared by an expert with the disputed finger prints (*q*)

A person who has been tried and acquitted under the Indian Penal Code, 1865, of offences of forgery and abetment thereof cannot be retried on the same facts for a separate offence under sec 82 (c) of the Registration

(*k*) *In re Ardeshir Karasji* (1912) 14 Bom L R 970 17 I C 717 See also *Emperor v Udit Narain* (1913) 35 All. 109 18 I C 896

(*l*) *Goberdhone v Ishwar Chander* (1900) 5 C W N 41, *Ram Charan v King Emperor* (1906) 5 Cal. L J 233.

(*m*) *Radhika v Lal Mohan* (1893) 20 Cal. 719 *Mata Dayal v Queen Empress* (1897) 24 Cal. 755

(*n*) *Queen Empress v Babaji* (1899) 1 Bom L R 686

(*o*) *Empress v Batesar* (1881) 10 Cal. 604

(*p*) *Baburam v Emperor* (1905) 32 Cal. 775 781, *Emperor v Kalya* (1903) 5 Bom L R 138.

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(*o*) *Empress v Batesar* (1884) 10 Cal 604

(*p*) *Baburam v Emperor* (1905) 32 Cal. 775 781, *Emperor v Kalya* (1903) 5 Bom L. R. 138.

(*q*) *Bagat Singh v King Emperor* (1927) 6 Pat. 305 104 I C. 626, (28) A. P 129

Act (r) [illegible] for forgery and for an offence under sec 82 (c) [illegible] fails for want of sanction the accused [illegible] under sec 82 (c) of this Act (s) Ss. 82-84

83. (1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Branch Inspector-General of Sindh the Registrar or the Sub Registrar, in whose territories district or sub-district, as the case may be, the offence has been committed

[illegible] may commence prosecutions

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class

Earlier Acts—See sec 83 of Act 3 of 1877, sec 81 of Act 8 of 1871, and sec 95 of Act 20 of 1866

Permission to prosecute.—There is a conflict of decisions as to whether the permission referred to in this section is a condition precedent to the prosecution of a person for an offence mentioned in sec 82 It has been held by the High Court of Calcutta that it is not (t) According to that Court," the provisions of sec 83 are *not obligatory* They rather seem to be intended for the purpose of enabling the officers of the Registration Department, when they should see fit, to institute any prosecution under the Act upon their own responsibility " The High Courts of Allahabad (u) and Rangoon (v) have held that it is According to that Court the provisions of sec 83 are obligatory The Madras High Court has held that no such permission is necessary if the prosecution is by a private person (w)

84. (1) Every registering officer appointed under this Act shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Registering officers to be deemed public servants

(r) *Moung Sain v King Emperor* (1923) 1 Rang 299, 76 I C 431, ('24) A R 213

(s) *Montajaddin v. Emperor* (1933) 143 I C 15, (33) A C 481

(t) *Gopi Nath v. Kuldip Singh* (1885) 11 Cal. 566 [F B]

(u) *Emperor v. Husain Khan* (1916) 38 All. 354, 36 I C 145, *Emperor v Husain Khan* (1917) 39 All. 293, 39 I C 690, *Emperor v Mahomed Mehdi* (34) A A 963 [F B]

(v) *Nga Pan Gaing v King Emperor* (1924) 1 Rang 299, 76 I C 431, ('24) A R 213

(w) *In re Palani Goundan* (1921) 40 Mad. L. J 211, 62 I C 582, ('21) A M. 140, *Re Nadathi* (1917) 40 Mad. 880, 38 I. C. 976

S. 84 (2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so

(3) In section 228 of the Indian Penal Code, the words "judicial proceeding" shall be deemed to include any proceeding under this Act

Earlier Acts—See sec 84 of Act 3 of 1877, sec 82 of Act 8 of 1871, and sec 96 of Act 20 of 1866

Public Servant—A clerk appointed by a sub registrar and paid out of an allowance given to the sub registrar, is not a "public servant" within the meaning of sec 21 of the Indian Penal Code (x)

(x) *Bhagwati* v *Emperor* (1905) 32 Cal 664

PART XV.

Miscellaneous.

Destruction of unclaimed documents.

85. Documents (other than wills) remaining unclaimed in any registration office for a period exceeding two years may be destroyed. Ss. 85–87

Registering officers not liable for things done or refused in official capacity.

86. No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

87. Nothing done in good faith pursuant to this Act or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

Nothing void or invalidated by defect in appointment or procedure.

Earlier Acts.—See sec 87 of Act 3 of 1877, sec 85 of Act 8 of 1871, and sec 88 of Act 20 of 1866.

Where registering officer is interested as a trustee—in good faith.—The registration of a wakfnama is not invalid by reason of being made by a registering officer who is a trustee for one of the charitable institutions benefited by the wakfnama if he has acted in good faith (*y*).

Registering document insufficiently stamped.—It is a "defect in procedure," if a registering officer registers a document insufficiently stamped (*z*).

"Defect in procedure."—This section provides that nothing done in good faith by any registering officer shall be deemed invalid merely by reason of any defects in procedure. No act, however, done by a registering officer can be held to be a mere "defect in procedure" if he has no jurisdiction to do it as where a person not entitled to do so presents for registration (*a*), or where the presentation is out of time (*b*), or where there is lack of

(*y*) *Muhammad Rustam Ali* v *Mushtaq Husain* (1920) 47 I.A. 224, 229 230, 42 All 609, 616, 27 I C 329, ('21) A PC 105

(*z*) *Sarda Nath* v. *Gobinda Chandra* (1919) 23 Cal. W. N 534, 539, 51 I C. 88, *Ma Pwa May* v. *S R M M A Chettyar Firm* (1929) 56 I A 379, 7 Rang 621 120 I C 645, ('29) A PC 279 See Stamp Act, 1899, sec 35

(*a*) *Mujibunnissa* v *Abdul Rahim* (1901) 28 I A 15, 22, 23 All 233, 241

(*b*) *Harendra Lal Roy Chowdhuri* v *Hari Das Debi* (1914) 41 I.A. 110, 41 Cal 972, 23 I C 637

S. 84 (2) Every person shall be legally bound to furnish information to such registering officer when required by him to do so.

(3) In section 228 of the Indian Penal Code, the words "judicial proceeding" shall be deemed to include any proceeding under this Act.

Earlier Acts.—*See sec 84 of Act 3 of 1877, sec 82 of Act 8 of 1871;* and sec 96 of Act 20 of 1866

Public Servant.—A clerk appointed by a sub-registrar and paid out of an allowance given to the sub registrar, is not a "public servant" within the meaning of sec 21 of the Indian Penal Code (x)

(x) *Bhaguati v Emperor* (1905) 32 Cal. 664

PART XV.

Miscellaneous.

Ss. 85-87

Destruction of unclaimed documents.

85. Documents (other than wills) remaining unclaimed in any registration office for a period exceeding two years may be destroyed.

Registering officers not to be liable for thing bona fide done or refused in his official capacity.

86. No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

Nothing so done invalidated by defect in appointment or procedure.

87. Nothing done in good faith pursuant to this Act or any Act hereby repealed, by any registering officer shall be deemed invalid merely by reason of any defect in his appointment or procedure.

Earlier Acts.—Sec. sec. 87 of Act 3 of 1877, sec. 85 of Act 8 of 1871 and sec. 85 of Act 20 of 1866.

Where registering officer is interested as a trustee—in good faith.—The registration of a wakfnama is not invalid by reason of being made by a registering officer who is a trustee for one of the charitable institutions benefited by the wakfnama if he has acted in good faith (*y*).

Registering document insufficiently stamped.—It is a "defect in procedure," if a registering officer registers a document insufficiently stamped (*z*).

"Defect in procedure."—This section provides that nothing done in good faith by any registering officer shall be deemed invalid merely by reason of any defects in procedure. No act however done by a registering officer can be held to be a mere "defect in procedure" if he has no jurisdiction to do it as where a person not entitled to do so presents for registration (*a*) or where the presentation is out of time (*b*) or where there is lack of

(*y*) *Muhammad Rustam Ali* v. *Mushtaq Husain* (1920) 47 I.A. 224, 229, 230; 42 All. 609, 616; 27 I.C. 329; (21) A. PC. 105.

(*z*) *Sarda Nath* v. *Gobinda Chandra* (1919) 23 Cal. W. N. 534, 539; 51 I.C. 88; *Ma Pwa May* v. *S. R. M. M. A. Chettyar Firm* (1929) 56 I.A. 379; 7 Rang. 624; 120 I.C. 645; (29) A. PC. 279. See Stamp Act 1899 sec. 35.

(*a*) *Mujibunnissa* v. *Abdul Rahim* (1901) 28 I.A. 15, 22; 23 All. 233, 241.

(*b*) *Harendra Lal Roy Chowdhuri* v. *Hari Das Debi* (1914) 41 I.A. 110; 41 Cal. 972; 23 I.C. 637.

Ss. 87, 88

territorial jurisdiction (*c*) But as a general rule if the registering officer omits to comply with the exact procedure prescribed by the Act, and the omission is one for which the person presenting the document cannot be held responsible it is a mere defect in procedure which does not vitiate the registration if it is made on a proper presentation (*d*)

The question whether an act or omission on the part of a registering officer amounts merely to a "defect in procedure" has been dealt with fully in its proper place under various sections of the Act It is enough to refer the reader to the pages —

Document in language not understood by registering officer —See notes to sec 19 on p 108 above

Description of property —See notes to sec 21, "Whether registration void if description insufficient" on p 115 above

Time for presenting documents —See notes to sec 23, "Registration void if document presented after proper time" on p 123 above

Registration by Registrar —See note 'Discretion' under sec 30 at p 134

Place of registration —See notes to sec 31, 'Special cause," on p 134 above

Person to present documents for registration —See notes to sec 32, Registration invalid if presentation unauthorized' on p 135 above

Appearance of parties —See notes to sec 35 "Whether registration void if made without the appearance of parties" on p 151 above, and notes Representative,' on p 152 above

Signature of person admitting execution —See notes to sec 58, Omitting to endorse signature on p 213 above

Sealing of certificate of registration —See notes to sec 60, 'Such certificate shall be sealed on p 214 above

Registration of documents executed by Government officer or certain public functionaries

88. (1) Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator-General of Bengal, Madras or Bombay, or for any Official Trustee or Official Assignee, or for the Sheriff, Receiver or Registrar of a High Court, to appear in

(*c*) *Aung Din v Maung Aung Myint* (1933) 11 Rang 207 (33) A I R 194 affirming 11 Rang 15 141 I C 705 (33) A R 5 *Ma Lwa May v S J M M Chettyar Firm* (1929) 56 I A 37 7 Rang 264 120 I C 645 (29) A P C 270

(*d*) See *Jagnath Singh v Jamal Bros & Co* (1924) 51 I A 18 22 51 Cal 351 79 I C 940 (24) A P C 48

person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58. Ss. 88, 89

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to any Secretary to Government or to such officer of Government, Administrator General, Official Trustee, Official Assignee, Sheriff, Receiver or Registrar, as the case may be, for information respecting the same and, on being satisfied of the execution thereof, shall register the instrument.

Earlier Acts—Sec. 88 of Act 3 of 1877; sec. 80 of Act 8 of 1871; sec. 84 of Act 20 of 1866; and sec. 66 of Act 16 of 1864.

* **Any instrument executed by him in his official capacity**—The provisions of this section apply only to instruments executed by Government servants and certain public functionaries; but no similar provision is made for the case of instruments under which any such officer or [illegible] in his official capacity, e.g., as [illegible] to a District Judge under O. 40, r. 1 of the Civil Procedure Code, 1908. Probably the omission is inadvertent and it must be remedied by legislation (e).

89. (1) Every officer granting a loan under the Land Improvement Loans Act, 1883, shall send a copy of his order to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved or of the land to be granted as collateral security, is situate, and such registering officer shall file the copy in his Book No. 1.

Copies of certain orders, certificates and instruments to be sent to registering officers and filed.

(2) Every Court granting a certificate of sale of immoveable property under the Code of Civil Procedure, 1908, shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1.

(3) Every officer granting a loan under the Agriculturists' Loans Act, 1884, shall send a copy of any instrument

(e) *Ma Shwe Mya v. Maung Ho Hnaung* (1922) 49 I. A. 395, 398; 50 Cal. 166; 70 I. C. 937; (22) A. P. C. 359.

Ss. 89, 90

whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be in his Book No 1

(4) Every Revenue officer granting a certificate of sale to the purchaser of immoveable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No 1.

Local Amendments —This section has been amended, in its application to the Presidency of Bombay, by sec 12 of the Indian Registration (Bombay Amendment) Act 5 of 1929 which came into force on the 22nd May 1929 The amendment is as follows —

In sub sections (1) and (3) of section 89 of the said Act [the Indian Registration Act 1908] for the words and figure " Book No 1" the word office shall be substituted

Earlier Acts —See sec 89 of Act 3 of 1877 There was no such provision in the previous Acts

Sub sec **(1)** —See sec 17 (2) (ix)

Sub sec **(2)** —See sec 17 (2) (xii)

Sub-sec **(3)** —See sec 17 (2) (x)

Sub sec **(4)** —See sec 17 (2) (xii)

Filed copy of certificate of sale —A certificate of sale granted under O 21, r 94, of the Civil Procedure Code, and filed as provided by sub-sec (2) is not a registered document either within the meaning of sec 50 of the Act (*f*) or within the meaning of Art 10, Sch I of the Limitation Act (*g*)

Exemptions from Act

Exemption of certain documents executed by or in favour of Government.

90. (1) Nothing contained in this Act or in the Indian Registration Act, 1877, or in the Indian Registration Act, 1871, or in any Act thereby repealed, shall be deemed to require, or to have at any time required,

(*f*) *Sirajun Nissa v Jan Muhammad* (1882) 2 All W N [illegible]

(*g*) *Fatteh Singh v Daropadi* (1905) Punj Rec No 142 [F B]

the registration of any of the following documents or maps, namely — **S. 90**

(a) documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land revenue and which form part of the records of such settlement, or

(b) documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land and which form part of the record of such survey, or

(c) documents which under any law for the time being in force are filed periodically in any revenue office by patwaris or other officers charged with the preparation of village records, or

(d) sanads, inam title deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land, or

(e) notices given under section 74 or section 76 of the Bombay Land Revenue Code 1879, of relinquishment of occupancies by occupants or of alienated land by holders of such land

(2) All such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act

Earlier Acts —*See sec 90 of Act 3 of 1877 sec 87 of Act 8 of 1871* and Act 27 of 1868 sec 1 and schedule

Operation of the section —The effect of this section is to exempt certain documents from registration and to treat them as if they were registered for the purposes of secs 48 and 49 of the Act

Whether Registration Act binding on the Crown —This section and sec 17 (2) (vii) contain an implication that the Crown is bound by the Registration Act (*h*)

Clause (d) —*A letter from Government to a Nawab stating inter alia* you will also have possession of the State lands specified in the

(*h*) *Secretary of State v Mahomed Yusuf* (1910) 21 Bom L J 1130, 1130 54 I C 134

Ss. 90-92

letter is a "grant" by Government within the meaning of this clause, and is exempt from registration (i)

There is a conflict of opinion whether the words "other documents purporting to be or to evidence grants or assignments by Government of land or of any interest therein," include leases from Government. It has been held by the High Court of Allahabad that these words should be read *ejusdem generis* with the preceding words "sanads, inam title deeds," and that they do not include leases from Government (j). On the other hand, it has been held by the High Courts of Madras (k) and Patna (l) that the said words should not be read *ejusdem generis* with the preceding words, and that they include leases from Government. The latter view, it is submitted, is correct. See sec 17 (2) (vii)

Clause (e).—Relinquishments under sec 74 of the Bombay Land Revenue Code are specifically exempt from registration, because *prima facie* they extinguish the right of the relinquishing khatedar to hold the occupancy as against Government, subject to the payment of revenue (m). A relinquishment from an inferior holder of alienated land to a superior holder of such land does not come under this clause and is not exempt from registration unless the land has been surveyed and the superior holder has been specifically authorized to receive such relinquishment (n)

Inspection and copies of such documents

91. Subject to such rules and the previous payment of such fees as the Local Government prescribes in this behalf, all documents and maps mentioned in section 90, clauses (a), (b), (c) and (e), and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

Burmese registration rules confirmed

92. All rules relating to registration enforced in Lower Burma prior to the commencement of the Indian Registration Act, 1877, shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained

(i) *Hassan Ali v. Chutterput Singh* (1892) 19 Cal 742, 745 746

(j) *Munshi Lal v. The Notified Area of Barant* (1914) 36 All. 176, 22 I C. 933.

(k) *Kalingal v. The Secretary of State* (1920) 43 Mad. 65, 53 I C. 345

(l) *Secretary of State v. Nataram* (1927) 6 Pat 416, 104 I C 209, ('27) A.I.R. 319

(m) *Motibhai v. Desaibhai* (1917) 41 Bom 170, 177, 38 I C. 838

(n) *Shidharaj v. Dara* (1921) 45 Bom 898, 901 905, 61 I C 464, ('21) A.I.R. 771.

against any officer or other person in respect of anything done under any of the said rules. Ss. 92, 93

Repeals

93. (1) The enactments mentioned in the schedule are repealed to the extent specified in the fourth column thereof. [illegible]

(2) Nothing herein contained shall be deemed to affect any provision of any enactment in force in any part of British India and not hereby expressly repealed.

Sub-sec. (2).—This sub-section is new. It was inserted by the present Act. The principal enactments referred to are the Transfer of Property Act, secs. 54 and 59, abolishing optional registration in the case of sales and mortgages, the Bengal Tenancy Act and other enactments containing special provisions relating to the registration of certain documents.

THE SCHEDULE.

REPEAL OF ENACTMENTS.

(*See section* 93)

Year	No	Short title	Extent of repeal.
1877	III	The Indian Registration Act, 1877	The whole
1879	XII	The Registration and Limitation Acts Amendment Act, 1879	So much as is unrepealed
1883	XIX	The Land Improvement Loans Act, 1883	So much of section 12 as is unrepealed
1886	VII	The Indian Registration Act, 1886	The whole
1888	VII	*The Civil Procedure Code Amendment Act*, 1888	So much as is unrepealed.
1891	XII	The Amending Act, 1891	In the second schedule the entries relating to Act III of 1877
1899	XVII	The Indian Registration (Amendment) Act, 1899	The whole

Rules made under Section 22 of the Act.

BENGAL.

Notification No [illegible], published at page [illegible], Part I of the Calcutta Gazette of the 7th February 1917

No 1120 L.R. [illegible] The 2nd February 1917 In exercise of the power conferred by section 22, sub-section (1) of the Indian Registration Act 1908 (XVI of 1908) and in supersession of all previous rules on the subject made by the late Government of Eastern Bengal and Assam and by the Government of Bengal the Governor in Council is pleased to make the following rule for the whole of the presidency of Bengal — **Rules, Bengal**

Rule.

"In all areas in which at the time of the acceptance of a document for registration a cadastral survey has been made and a record of rights has been finally published under the Bengal Tenancy Act 1885 (VIII of 1885) or under any other law houses (not being houses in towns) and lands shall be described for the purposes of section 21 of the Indian Registration Act, 1908, by the reference to the detailed maps prepared in the course of that survey (or, where more than one cadastral survey has been made of the same area, then by reference to the detailed maps prepared in the course of the most recent survey), and to the survey number of the plots in which the houses or lands are situated, and such description shall also state the areas of such plots in the notation used in the records of rights

[illegible] * [illegible]

cannot conveniently be described by survey numbers or by areas in the notation used in the record of rights, such description may be dispensed with "

2 Notification No 420, dated the 23rd January 1911, issued by the Government of Bengal, and Notifications No 3288G, dated the 28th July 1908, and No 637G, dated the 27th February 1911, issued by the late Government of Eastern Bengal and Assam, are hereby cancelled

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* Substituted for the word "small" by Notification No 372 T R, dated the 28th April 1917, published at p 630, Part I of the *Calcutta Gazette* of 2nd May 1917

Rules made under Section 22 of the Act.

MADRAS.

Notification of the Government of Madras Judicial Department, No 519 dated Ootacamund, May 29 1919, under section 22 (1) of the Indian Registration Act XVI of 1908, as amended by the notification of the Government of Madras Law (Registration) Department, No 20, dated 24th April 1933

Rules, Madras

In supersession of notification No 497, dated the 8th December 1902, published on pages 1225 1231 of the *Fort St George Gazette*, Part I, dated the 9th December 1902 as amended by notification No 336, dated the 11th July 1903, on page 711 of the *Fort St George Gazette*, Part I, dated the 14th July 1903 and of notification No 851 dated the 11th December 1917, published on page 1400 of the *Fort St George Gazette*, Part I, dated the 18th December 1917, His Excellency the Governor in Council is pleased to enact, under section 22 (1) of the Indian Registration Act XVI of 1908, that the following rule shall take effect from and after the 1st July 1919 in the districts and portions of districts mentioned in the accompanying list —

(a) Every non testamentary document presented for registration and relating to land shall if the land comprises one or more entire survey fields or sub-divisions, specify the number of each field or sub division as given in the Government village map

(b) If the land has no separate number assigned to it in the Government village map, the document shall specify the number assigned in such village map to the survey field or sub-division in which the land is situated, together with such description of the land as is sufficient for its identification

(c) Failure to comply with the provisions of this rule shall disentitle a document to be registered

List showing the districts and portions of districts in which the rule framed under section 22 (1) of Act XVI of 1908 came into operation on and after the 1st July 1919

Rules, Madras

Districts and portions of districts to which the rule extends (1)	Portions of districts to which the rule does not extend (2)
1 *Ganjam* — The whole	
2 *Vizagapatam* —The whole except the village mentioned in column 2	*Village in the Palkonda taluk* Kilantra
3 *East Godavari* — The whole except the villages mentioned in column 2	1 *Amalapur taluk* Chettipalle 2 *Ramachandrapur taluk* Merrupadu 3 *Polavaram taluk* Jayanavarigudem Sitaramanagaram Gogumilli Gummaluru Ganganagudem Ravutugudem Jaggichettigudem Koraturu Sivagiri Chiduru Tiyyamamidi Ravigudem Dharvada Osuru Chilakaluru Rammannapalem Madakanvarigudem Dattavarigudem
3 *East Godavari* — The whole except the villages mentioned in column 2 —*contd*	3 *Polavaram taluk*—contd Madasugudem *alias* Venkaragudem Danammarigudem Birrivalipadu or Mulagudem Nerusugudem Khandrikapadu Tatiyakulagudem Kopalle Kamapurampadu Vupparilli Munugulura Urranki Kotrupalle Dondipudi Virampalem Chammanapalle 4 *Yellavaram taluk* Puligogulapadu Kotturupadu Doddivaka Urlakulapadu Balijepadu Chikilinta Chinnagarrangi Gollumandalavari Sorabhavaram Kondalingamparti Kottapalle Karidevupalem Maridubaka *Peddagarranga* Vanchangi Komarapurapupadu Peddarellangipalem Kesavaram Lododdi Pakaveltipadu Pudedu Vagipalem Vatangi Okurti Rajavommangi

Rules made under Section 22 of the Act.

MADRAS.

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(a) Every non testamentary document presented for registration and relating to land shall if the land comprises one or more entire survey fields or sub-divisions specify the number of each field or sub division as given in the Government village map

(b) If the land has no separate number assigned to it in the Government village map, the document shall specify the number assigned in such village map to the survey field or sub-division in which the land is situated, together with such description of the land as is sufficient for its identification

(c) Failure to comply with the provisions of this rule shall disentitle a document to be registered

List showing the districts and portions of districts in which the rule framed under section 22 (1) of Act XVI of 1908 came into operation on and after the 1st July 1919

Rules, Madras

Districts and portions of districts to which the rule extends (1)	Portions of districts to which the rule does not extend (2)	Districts and portions of districts to which the rule extends (1)	Portions of districts to which the rule does not extend. (2)
1 *Ganjam* — The whole		3 *East Godavari* — The whole except the villages mentioned in column 2 —*contd*	3 *Polavaram taluk*—contd
2 *Vizagapatam* —The whole except the villages mentioned in column 2	*Villages in the Palkonda taluk*		Madasugudem *alias* Venkaragudem
	Kilantra		Danammarigudem
3 *East Godavari* — The whole except the villages mentioned in column 2	1 *Amalapur taluk*		Barrinkalapadu or Mulagudem
	Chettipalle		Nerusugudem
	2 *Ramachandrapur taluk*		Khandrikapadu
	Mermipadu		Tatiyakuligudem
	3 *Polavaram taluk*		Kopalle
	Jayanavarigudem		Kamapurampadu
	Sitaramanagaram		Vupparilli
	Gogumilli		Munugulura
	Gummaluru		Urranki
	Ganganagudem		Kotrupalle
	Ravutugudem		Dondipudi
	Jaggichettigudem		Virampalem
	Koraturu		Chammanapalle
	Sivagiri		4 *Yellavaram taluk*
	Chiduru		Puligogulapadu
	Tiyyamamidi		Kotturupadu
	Ravigudem		Doddivaka
	Dharvada		Urlakulapadu
	Osuru		Balijepadu
	Chilakaluru		Chikilinta
	Rammannapalem		Chinnagarrangi
	Madakanvarigudem		Gollumandalavari Sorabhavaram
	Dattavarigudem		Kondalingamparti
			Kottapalle
			Karidevupalem
			Maridubaka
			Peddagarrangi
			Vanchangi
			Komarapurapupadu
			Peddarellangipalem
			Kesavaram
			Lododdi
			Pakaveltipadu
			Pudedu
			Vagipalem
			Vatangi
			Okurti
			Rajavommangi

Rules, Madras

Districts and portions of districts to which the rule extends (1)	Portions of districts to which the rule does not extend (2)	Districts and portions of districts to which the rule extends (1)	Portions of districts to which the rule does not extend (2)
3 *East Godavari* —	4 *Yellavaram taluk*—contd	3 *East Godavari* —	4 *Yellavaram taluk*—contd
The whole except the villages mentioned in column 2—*contd*	Surampalem	The whole except the villages mentioned in column 2—*contd*	Bodlanka
	Amirekula		Papampeta
	Dasaripalem		Matlapadu and Kudummalapadu
	Errampadu		Venkatanagaram
	Kimilgadda		Gondolu
	Banadapalle		Rajavaram
	Vayyeru		Sarampeta
	Chinnarellangipalem		Gangampalem
	Murlavanipalem		Dokulamandakrishnavaram
	Subbampadu		Ozubanda
	Pasurlova		Potamdorapalem
	Kondapalle		Jaggampalem
	Sarabhavaram		Jiyyampalem
	Vanakaravi.		Rajavaram
	Appannapalem		Neludonilapadu
	Boddegandi.		Kamavarapupada
	Boyapadu		Kondalampalem
	Kirraba		Rajupetaloddi.
	Tallipalem		Yamanapalle
	Dakarayi.		Donelapalle
	Hukumpeta		Surampalem
	Ganapatipeta.		Lakkonda
	Tantikonda		Gangavaram
	Singampalle		*Banadam*
	Dongalanallavaram		Peddigarlapadu
	Ginjarti.		Goragummi
	Vingavarampadu		Pandrapottipalem
	Anantagiri.		Kusumaravi
	Damanpalem		Amudalabanda.
	Nellimitla.		Doramamidi.
	Lagarayi.		Errampalem
	Gilugulapadu		Kottada
	Kindra		Rajampalem
	Munjavarapupadu		Agraharapupadu
	Labbarti.		Atalagondi.
	Gadisokurti.		Rajampalem
	Gobbillamadugu		Ummetta.
	Bonangipalem		Loddipalem
	Cheruvukommapalem		Vemulova
	Donelapalem		Ilatamamidi.
	Marripalem		Vanavapadu
	Velagalapalem		Uyyalamadugu
	Revatipalem.		Ravanapalle
	Busaruvanipalem		Kottaramavaram
	Doramamidi.		Lataramavaram
	Ganaravvapeta		Uppalapadu Narasapuram
	Kinaparti.		Cholavaram
	Kottamapalem		
	Languparti.		
	Achchavvapeta.		

Rules, Madras

Districts and portions of districts to which the rule extend (1)	Portions of districts to which the rule does not extend (2)	Districts and portions of districts to which the rule extends (1)	Portions of districts to which the rule does not extend. (2)
3. *East Godavari* — The whole except the villages mentioned in column 2 —*contd*	4 *Yellavaram taluk*—contd Chinnagarlapadu Bhireddi Sivarampatnam Ramala Devapuram 5 *Nugur taluk* All the villages 6 *Bhadrachalam taluk* All the villages	13 *North Arcot*—The whole	
4. *Kistna and West Godavari* — The whole			
5 *Guntur* — The whole			
6 *Nellore* — The whole			
7 *Cuddapah* — The whole			
8 *Kurnool* — The whole			
9 *Bellary* — The whole			
10 *Anantapur* — The whole except the village mentioned in column 2	*Anantapur taluk* Siddampeta	14 *South Arcot*—The whole 15 *Trichinopoly*—The whole	
11 *Chingleput* — The whole		16 *Tanjore* — The whole	
12 *Chitoor* — The whole		17 *Tinnevelly* — The whole	

Rules, Madras

Districts and portions of districts to which the rule extends (1)	Portions of districts to which the rule does not extend. (2)	Districts and portions of districts to which the rule extends (1)	Portions of districts to which the rule does not extend (2)
18 *Madura* — The whole except the village mentioned in column 2	*Tirumangalam taluk* Kalingulam	22 *The Nilgiris*— The whole	.
19 *Ramnad* — The whole		23 *South Kanara* — The whole	.
20 *Salem*.— The whole		24 *Malabar* — The whole except the portions of villages mentioned in column 2	.
21 *Coimbatore* —The whole			

Rules made under Section 22 of the Act.

BOMBAY.

Notification Revenue Department No 6112, dated the 18th July 1910, published at page 1065 of the Bombay Government Gazette, Part I for 1910, as amended by Government Notification Revenue Department, No 1495, dated the 16th February 1911, published at page 291 of the Bombay Government Gazette for 1911 Part I

No 6112—In exercise of the powers conferred by section 22 of the Indian Registration Act, 1908 (XVI of 1908), the Governor in Council is pleased to make the following rule in supersession of the rule published in Government Notification in the Revenue Department, No 7968, dated the 12th August 1907, and to direct that it shall come into force on the 1st day of October 1910 — **Rules, Bombay**

Rule under section 22 of the Indian Registration Act, 1908, prescribing reference to maps in non testamentary documents

(1) In all areas within the Presidency of Bombay, to which a survey has been extended, lands shall, for the purposes of section 21 of the Indian Registration Act, 1908, be described by reference to the Government map or survey

(2) Any land within the said Presidency of which a map has been prepared under the provisions of Chapter X A of the Bombay Land Revenue Code, 1879 (Bom V of 1879), shall for the purpose of section 21 of the Indian Registration Act, 1908, be described by reference to the serial numbers in such map, and in such case reference to any other Government map shall not be necessary

(3) Failure to comply with the provisions of this rule shall disentitle a document to be registered

Rules made under Section 22 of the Act.

BIHAR AND ORISSA.

No 420, dated Calcutta the 23*rd January* 1911

Notification—By the Government of Bengal, Revenue Department
(*The rule is still in force in the Province of Bihar and Orissa*)

Rules, Bihar and Orissa

In exercise of the power c
Indian Registration Act 190
previous rules on the subject,
to make the following rules —

In all areas in which, at the time of the acceptance of a document f
registration,

(a) a cadastral surve
finally published
of 1885), or the (
of 1908), or

(b) a cadastral survey has been made and record of rights has be
published under the Sonthal Parganas Settlement Regulati
(III of 1872) or

(c) a cadastral survey has been made and a record of rights h
been prepared under any law,

houses (not being houses in towns) and lands shall be described for the purpos of section 21 of the Indian Registration Act, 1908, by reference to the detail maps prepared in the course of that survey, (or, where more than one cada tral survey has been made of the same area, then by reference to the detail maps prepared in the course of the most recent survey), and to the surv number of the plots in which the houses or lands are situate, and suc description shall also state the areas of such plots, in the notation used in th record-of rights

Provided that, where the lands to be described consist of small villag or taluks or parganas or other local sub divisions, or of specific portions such areas, or of estate or tenures or specific interests in estates or tenur and cannot conveniently be described by survey numbers or by areas in th notation used in the record of rights, such description may be dispensed wit

Rules made under Section 22 of the Act.

BURMA.

General Department.

NOTIFICATION.

Dated Rangoon, the 24th December 1913

No 371.—In exercise of the power conferred by section 22 sub section (1), of the Indian Registration Act, 1908, and in supersession of General Department Notification No 32, dated the 16th January 1912, the Lieutenant-Governor is pleased to issue the following rule regarding the cases and manner in which lands shall be described for the purposes of section 21 of the said Act by reference to a Government map or survey The rule shall come into force on the 1st January 1914 — **Rules, Burma**

Rule.

(1) Land whether in towns or outside them which has been cadastrally surveyed and of which supplementary survey maps exist shall for the purposes of section 21 of the Indian Registration Act, 1908, be described in documents presented for registration either by a reference to a certified extract (attached to the document and bearing the signatures of all the parties executing it) from the map of the *kwin* or town survey block exhibiting such land and setting forth the undernoted particulars regarding it, or (in the absence of such certified abstract) by the inclusion in the document of these particulars —

(a) the names and numbers of letters if any of the *kwin* or block and other territorial divisions declared by rule under section 69, sub section (1), clause (c) of the Act within which the land is situate,

(b) the holding number given to such land in the map of the *kwin* or block and the year of the map to which reference is made, and

(c) if a portion of a holding only is affected, the numbers of the fields or survey plots or other survey units given to the land in the map mentioned under (b)

(2) Failure to comply with the provisions of clause (1) of this rule shall preclude a document from registration unless the land is otherwise sufficiently described to the satisfaction of the Registering Officer, who before registering the document shall endorse on it the omitted particulars with a statement whether or not the parties admit them to be correct

Rules made under Section 22 of the Act.

COORG.

NOTIFICATION.

Bangalore, the 8th February 1904

Rules, Coorg

No 19 —Under section 22 (1) of the Indian Registration Act, (III of 1877) as amended by the amending act XVII of 1899, the Hon'ble the Chief Commissioner of Coorg is pleased to direct that for the purposes of section 21 of the Act all immoveable properties which have been surveyed shall be described in documents, including Court sale certificates and certificates granted under the Agriculturists and Land Improvement Loans Acts, that may be presented for registration by giving their correct survey numbers together with their area in acres and that their boundaries shall similarly be described with reference to the current survey numbers of the adjacent lands

Rules made under Section 22 of the Act.

ASSAM.

Notification, dated the 27th February 1911, *published in Part II of the Eastern Bengal and Assam Gazette of the 1st March* 1911

No 637 G —In exercise of the powers conferred by section 22, clause 1, of the Indian Registration Act, XVI of 1908, the Lieutenant Governor is pleased to prescribe the following rule — **Rules, Assam**

In all areas in which a cadastral survey has been made, and a record of rights has been prepared under the authority of Government, houses not being houses in towns and lands, shall be described for the purposes of Section 21 of the Indian Registration Act, XVI of 1908, by reference to the detailed maps or records prepared in the course of those operations

This supplements notification No 3288 *G, dated the 28th July* 1908 *See below*

The 28th July 1908

No 3288 G —In exercise of the powers conferred by Section 22 clause 1, of the Indian Registration Act, III of 1877, the Lieutenant Governor is pleased to prescribe the following rule —

In all areas in which a cadastral survey has been made, and a record of rights has been prepared under the authority of Government, houses, not being houses in towns and lands shall be described for the purposes of Section 21 of the Indian Registration Act, III of 1877, by reference to the detailed maps or records prepared in the course of those operations

Extract from the Registration Manual—Part II.

THE UNITED PROVINCES.

Rules, United Provinces

Territorial division

170. The description of the territorial division required by section 21 of the Act shall be the name of the village, pargana, tahsil and revenue district in which the house or parcel of land is situate, the name of the thok or, patti being prefixed when the property is situated in a pattidari or bhayachara village

Entries relating to property within the registering officer's jurisdiction should be made in black ink, the others in red ink in order to facilitate the preparation of index No II

Extract from the Registration Manual.

THE PUNJAB.

Rules, Punjab.

Examination as to unverified interlineations, etc.

121. If the document is brought for registration within the time allowed by law, the registering officer will see whether it contains any unverified interlineations, blanks, erasures or alterations of the kind mentioned in section 20 of the Act, and, in the case of documents relating to immoveable property, whether the description of the property is sufficient for identification. If he is not satisfied on either of these points, he may hand the document back to the presenter for remedy of the defect. Foreign documents should not be accepted unless accompanied by the translations and copies required by section 19, and documents of the kind mentioned in sub-section (4) of section 21 of the Act unless accompanied by the required copy or copies of the map or plan.

Rules made under Section 69 of the Act.

BENGAL.

CHAPTER I

Rules, Bengal

Record of destruction of unclaimed documents under section 85

15. (1) When a registered document which has remained unclaimed in any registration office for a period exceeding two years is destroyed under section 85 a note to that effect shall be made in the margin opposite to the copy in the book in which the document is registered, as well as against the entry of the document in the fee book. The note should invariably be initialled and dated by the registering officer.

(2) Before any document is destroyed an endeavour must always be made by the registering officer in whose office the document is kept to induce the presentant thereof to take it back.

CHAPTER III

LANGUAGES TO BE DEEMED TO BE COMMONLY USED IN DIFFERENT DISTRICTS

Languages to be deemed to be commonly used in different districts

19. The following languages shall be deemed, for the purposes of section 19, to be those commonly used in the districts respectively mentioned opposite thereto —

Languages	Districts,
English Bengali and Urdu	Districts of the Burdwan Presidency, Dacca Chittagong and Rajshahi Divisions
English Hindi Urdu and Bengali	District of Darjeeling

CHAPTER V—PROCEDURE PRIOR TO ACCEPTANCE OF DOCUMENTS FOR REGISTRATION

Conditions of admissibility

21. On the presentation of a document for registration the registering officer shall first satisfy himself—

(*a*) that it has been presented at the proper office (sections 28, 29 and 30),

(*b*) that it bears the proper stamp or is exempted from, or does not require, stamp duty,

(*c*) that it is in a language deemed to be commonly used in the district or is accompanied by a true translation into such a language and a true copy (section 19),

(*d*) that in the case of any interlineation, blank, erasure or alteration, the provisions of section 20 and rule 26 have been complied with,

(*e*) that if the document is non testamentary and relates to immoveable property, the description is sufficient (section 21),

(*f*) that if the document is non testamentary and relates to lands or houses the description of which is governed by a rule made under sub-section (1) of section 22, the lands of houses are described according to that rule

(*g*) that if the document is non testamentary and contains a map or plan, it is accompanied by the prescribed number of true copies of the map or plan [section 21, sub section (4)],

(*h*) that if the document is not a will, it has been presented within the proper time (sections 23 to 26), and

(*i*) that the document has been presented by the person authorized in that behalf (section 32 or section 40)

Procedure in other cases when document is inadmissible

22. If any of the conditions indicated in clauses (c) to (i) of rule 21 have not been complied with, or if the presentant refuses to pay the proper registration fee, the document must be returned at once to the presentant with the endorsement "Registration refused," an entry being made at the same time in Register book No 2

Provided that action under this rule may be deferred at the request of the parties in order to enable them to comply with the requirements of the law, but in such cases an order of refusal shall be passed if the said requirements have not been complied with within the time allowed for presentation (sections 23 to 26)

Receiving documents for registration

23. Documents presented for registration shall be received one at a time ordinarily in the order of presentation, and each shall be examined and endorsed in the same order as far as practicable No document shall ordinarily be received for registration after the hours fixed for presentation

Registration of a document affecting immoveable property situated in an area transferred before registration

24. A registering officer having jurisdiction to accept a document affecting immoveable property for registration at the time of its presentation to him shall complete its registration, notwithstanding the fact that the village in which the immoveable property affected is situated has been transferred from his jurisdiction subsequent to the presentation of the document but before the completion of its registration, but a memorandum (Form No 6 in Appendix I) shall be sent, without levy of any fee, to the office to the jurisdiction of which the village has been transferred for the purpose of being filed in that office

Rules, Bengal

When, however, after refusal to register by a registering officer, the village in question is transferred, whilst the document is on appeal before a Registrar or in a suit before a Civil Court, to the jurisdiction of another Sub-Registrar the document, if the Registrar or the Court orders that it shall be registered, shall be represented for registration to the registering officer in whose sub-district the village has been transferred

Procedure in case of unavoidable delay

25. (1) When a document is presented under sub section (1) of section 25, to a Sub Registrar, he shall, after examining it with regard to the particulars mentioned in rule 21, record on the document the endorsement under clause (a) of sub-section (1) of section 52 and also the endorsement under section 58, if the executant is present and forward the application referred to in sub section (2) of section 25, together with the statement of the presentant examined with regard to the cause of delay, to the Registrar of the district with any remarks which he may wish to make in favour of or against the acceptance of the deed If the Registrar passes an order that the document may be accepted for registration the Sub Registrar shall realise the fine under section 25 and deal with the document in the same manner as a document presented within the time allowed for registration The usual registration fee shall be realised by the Sub Registrar

(2) A receipt in which the headings prescribed in form No 8 in Appendix I shall, as far as practicable, be filled up, shall be granted for the document from a separate receipt book maintained under clause (b) of sub-section (1) of section 52

Attestation of interlineations blanks erasures and alterations

26. (1) When the executant of any document appears personally, he shall be required to attest all interlineations, blanks, erasures and alterations as prescribed by section 20

(2) When he appears by a representative or agent, the attestation of such representative or agent shall be accepted, if the interlineations, blanks, erasures or alterations are of an unimportant character, or if due cause for such acceptance is shown

Return of documents presented at wrong office

27. (1) When a document is presented to a registering officer whose office is not the proper office for its registration, he shall return it to the presentant with the endorsement "Returned for presentation at the proper office"

(2) When a document is returned under sub rule (1), no entry shall be made in Register book No 2

Rules, Bengal

Impounding of documents unstamped

28. (1) Whenever it appears to a registering officer that a document presented for registration is not duly stamped, he shall not realize the registration fee but shall impound the document at once under section 33 of the Indian Stamp Act, 1899 and shall enter it without delay in the register for impounded documents (Form No 7 in Appendix I)

(2) The headings prescribed in Form No 8 in Appendix I shall, as far as practicable be filled up in the receipt granted to the presentant under clause (b) of sub section (1) of section 52, out of a separate book of receipts to be maintained for the purpose, and the words "Document impounded" shall be recorded in *red* ink on the receipt under the registering officer's signature

(3) Before forwarding the document to the Collector, the registering officer shall record on it—

(*i*) the endorsement "Impounded and forwarded to the Collector under sub section (2) of section 38 of the Indian Stamp Act, 1899,"

(*ii*) the endorsement required by clause (a) of sub-section (1) of section 52, and

(*iii*) if the executant is present the endorsements required by section 58

Procedure when impounded document is returned by the Collector

29. (1) When an impounded document is received back from the Collector with his certificate that it is duly stamped or is not chargeable with duty, or that the proper or deficit stamp-duty has been paid, the registering officer shall send a notice to the presentant requesting him—

(*a*) to appear on or before a fixed date with the receipt which was given to him on presentation of the document,

(*b*) to pay the necessary fees on or before a fixed date, and

(*c*) to take steps for the registration of the document if the admission of the execution was not recorded before proceeding under rule 28, and on his complying fully with such request, the registration shall be proceeded with

(2) The said fees may be taken either from the presentant, if he appears, or from the person nominated in writing in that behalf on the receipt, or from the claimant if he voluntarily tenders it, and the requisite entries shall then be made in the fee book and in the receipt

(3) When the fees are paid by the claimant, a receipt shall be given to him in form No 10 in Appendix I

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(4) If the presentant or any of the persons mentioned in sub rule (2) fails to pay the necessary fees on or before the date fixed, registration may be refused for non payment of fees, provided that the registering officer is satisfied that the notice referred to has been received by him

Procedure when stamp-vendor's endorsement is in a language not understood by the registering officer

30. If the stamp vendor's endorsement on a document is in a language not understood by the registering officer, and which is not commonly used in the district, the presentant shall be required to file a translation which must be certified to be a true translation and attested by the presentant

Procedure on presentation of document in which registering officer is personally interested

31. (1) If any document in which a registering officer is personally interested either directly or indirectly, is presented to him for registration or if he is asked to authenticate a power of attorney granted for the registration of any such document, he shall recommend the parties to present the document or power at some other registration office under the provisions of section 29, section 30, or clause (a), of sub section (1) of section 33 as the case may be

(2) If the parties after being recommended to present such document or power at some other office insist on the registration of the document or the authentication of the power of attorney by the said registering officer, he shall register the document, or authenticate the power, as the case may be, and, if he is not himself a Registrar shall report the facts to the Registrar to whom he is subordinate

Procedure regarding acceptance of documents relating to property partly in British India and partly out of it

32. A document relating to property, partly situate in British India and partly out of it, may be accepted for registration by the Sub Registrar within whose sub-district some portion of the property lies, but in such a case the certificate of registration shall show that the registration has been effected only as regards that portion of the property which lies within British India

CHAPTER VIII.

Application of rule 52 to documents executed out of British India.

56. (1) The procedure prescribed by rule 52 shall apply also in the case of documents referred to in section 26, with this exception only, that the period of four months referred to in that rule and any extended period allowed under the proviso to sub section (1) of section 31 must be reckoned from the date of the arrival of such documents in British India, and not from the date of their execution

(2) Such documents shall not, under any circumstances, be admitted to registration more than eight months from the date of their arrival in British India.

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57. In the case of a document executed by some of the parties in, and by others out of British India the party presenting the document may proceed at his option under section 23 or section 25 instead of under section 26 and if he does so the provisions of those sections shall apply.

Presentation of documents executed by parties in British India and partly out of it.

CHAPTER X.—PROCEDURE ON THE ADMISSION OF A DOCUMENT TO REGISTRATION

Document to be copied after admission of execution.

63 When all the persons executing a document or their representatives, assigns or agents have appeared and admitted its execution the documents shall be copied into the appropriate book.

Procedure of registration of documents presented in duplicate, triplicate, etc., copies.

64 When two or more copies of the same document are admitted to registration at the same time each copy shall be separately numbered in the fee and the Register books. All endorsements shall be written upon each copy, but it shall not be necessary to copy the documents more than once in the Register book. So far as the duplicate, triplicate or other copies are concerned only the endorsements (including the stamp vendor's endorsement) and the *kaifiyat* if any on them shall be copied. A note shall at the same time be made in the central portion reserved for the copy of a document in the book showing the number, volume and page of the register in which the original has been copied.

Copies of maps or plans referred to in section 21 sub-section (4).

65 The copies of maps or plans which are required by sub section (4) of section 21 to accompany documents must be attested as true copies by the signatures of the persons executing such documents or by the signatures of their agents. The original maps or plans contained in the documents must, on acceptance of the documents, be signed, dated and sealed by the registering officer.

Copies of maps or plans contained in a document brought for re-registration.

66 When a document containing a map or plan is presented for re registration under section 24, the parties need not deposit fresh copies of the map or plan under sub-section (4) of section 21, but the registering officer shall certify, on re registration against the copy of the document made in the Register book that the map or plan attached to it is the same as the copy of the map or plan which was filed with the document on its first presentation.

Procedure of re registration of documents.

67. A document tendered for re registration shall be treated in all respects as if it were a new document. It shall be recopied in its altered form and full fees shall be levied. If there be insufficient room on the back

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of the document for the new set of endorsements required, they shall be written or continued on a separate piece of paper as provided in rule 74; only the endorsements, including the certificate of admissibility under rule 43 on each registration, shall be copied on the left hand margin of the book, previous endorsements already made on the document being copied in *red* ink in the body of the copy in the order in which they appear on the original deed

Translations and copies

68. (1) The translations and copies of documents required by sections 19 and 62 shall be made on cartridge paper

(2) Such translations and copies shall be kept in separate file, a reference being made to the said file on the right hand margin of the page on which the translation is copied in the book

(3) The said file shall be bound from time to time when it contains a sufficient number of translations and copies to form a volume

(4) When translations are made, the endorsements referred to in rule 43, sub-rule (1) of rule 46 and section 60, and the entry referred to in sub-rule (1) of rule 45 shall be copied on the left hand margin of the page of the register book into which the translations are copied

Copyist and comparer to sign their names in registers

69. (1) The copy of every document in a register book shall be compared with the original by some person other than the copyist, and the copyist and comparer shall append their signatures in full with their designation and date below each signature to the copy in the book, using, respectively, the words "Copied by" and "Compared by," and the reader and the Sub-Registrar shall likewise put their signatures in the copy with the date

(2) The copyist, reader and comparer of the endorsements shall likewise be required to sign and date in the left hand margin

Reading and comparing to be done independently of the copyist, if possible

(3) Whenever the staff is sufficient, the reading and comparing shall be done independently of the copyist, and the latter shall neither read nor compare what he has copied

Interlineations blanks erasures alterations and corrections

70. Interlineations, blanks, erasures and alterations in a document must not be copied as such, but must be noted by the registering officer as required by sub-section (2), of section 20, even though they may have been incorporated in a duly attested note or *Kaifiyat* on the document itself

Procedure when document is copied in a wrong book

71. (1) When a document is erroneously copied into a wrong book, the register copy of the certificate and endorsements already made on the document shall not be cancelled, but the Registrar may direct, under section 68, that a copy of the document with the certificate and endorsements thereon shall be made in the appropriate book without additional charge A document so copied shall be given the number assigned to the last previous document in the book to which it is transferred with the letter 'S' attached

(2) In the circumstances described in sub rule (1), a certificate under section 60 or a final certificate, in the following form shall be given on the left hand margin of the book in which the document is recopied and, if possible, on the document below the former certificate —

"Registered again under the orders of the Registrar of No , dated 19 , as Document No S , in Book No , Volume , Page "



Signature of Registering Officer

(3) A cross reference shall in such a case, also be made on the right hand margin of the original entry of registration in the wrong book in respect of the copy in the appropriate register

(4) If the error in copying is discovered after the document has been returned after registration, the same procedure shall be followed, a note being made in the margin of the copy in the wrong book, of the volume and the page of the appropriate book into which the contents are re copied

(5) In both of the cases referred to in sub rules (1) and (4), fresh entries must be made in the appropriate indexes, without cancelling the original entries made in those indexes

Procedure of correct registration of a document registered in a wrong office in contravention of section 28

72. (1) When a document relating to immoveable property is registered through inadvertance in contravention of section 28 the registering officer shall instruct the executant of the deed and the claimant thereunder to obtain a direction under section 68 for its registration from the Registrar of the district in whose jurisdiction the proper office is situate

(2) When such direction is received, the registering officer concerned shall register the document without levy of any fee, and shall refer to the order of the Registrar in the endorsement of presentation

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(3) The registering officer in whose office the document was originally registered shall follow the procedure prescribed by sections 64 and 66 and shall forward to the proper office, free of charge, a copy or a memorandum of the document The receiving officer shall file the copy of memorandum in his file book No 1

Form of final endorsement of registration

73. When a document has been copied into a book and compared, the registering officer shall sign and date the true copy in the register and make, in Form No 4 in Appendix II the endorsement thereon required by section 60 The registration of the document shall thereupon be deemed to be complete

Making endorsements on separate paper

74 (1) When there is no room on a document for the necessary endorsements they shall be made on a separate quarter sheet of machine made medium paper, which shall be supplied by the registering officer and shall be attached to the document an explanatory note being at the same time made on the document itself and signed by the registering officer

(2) Every piece of paper so added must bear the seal of the registering officer and must be signed and dated by him

Printed or lithographed forms for documents in a common form

75. (1) Any person having occasion to register any considerable number of documents in the same form, such as leases, agreements or bonds, may deposit in any registration office any number, not less than fifty, of printed or lithographed forms of such documents

(2) Such forms must be printed or lithographed lengthways on machine-made paper of medium size Blank spaces must be left in the body and at the foot of the form for filling in names, amounts of money, areas, boundaries, and any other required particulars A margin must be left, of one inch, on the left hand side for binding No margin shall be necessary for copying endorsements as in the case of other registers, but the forms must contain a blank space, of not less than one side of a half sheet of the paper, on which the endorsements are to be copied

(3) Before use such forms must be bound into volumes and paged in the Registration office and a certificate as to the number of pages contained in a volume must be written on it and signed by the registering officer One volume shall be kept for each depositor, and his name shall be noted outside The volumes shall be numbered and shall be treated in all other respects as volumes of Register book No 1 or Register book No 4, as the case may be

(4) On the presentation of a document which is an exact duplicate of any form deposited and is executed by, or in favour of, any one of the depositors, it shall be copied into the volume appropriated to that depositor's

forms, that is to say, the blank spaces in the form previously deposited shall be filled up so as to make it an exact copy of such document

Rules, Bengal

(5) Priority must be given to the registration of documents presented under this rule and every endeavour must be made to return the document to the presentants thereof before they leave the office

76 (1) When owing to an error or omission in any document which has been registered a supplementary document rectifying such error or omission is presented for registration a note of such rectification shall be made in the margin of the register in which the original document is registered in the form This document has been rectified by document No of 19 volume , page of (name of office)

Rectificatory document

(2) If the volume in which the original document was copied has been sent to the Sadar Record room the Sub Registrar by whom the deed of rectification has been registered shall write to the Sadar Sub Registrar requesting him to make the necessary note of rectification in the appropriate register which he shall do under his signature

77 (1) Documents must be promptly returned after registration to the presentants or other persons authorized to receive them and the receipts returned by the parties must be pasted on to their respective counterfoils

Prompt return of documents after registration

(2) Every endeavour must be made to return documents on the date noted on the receipt granted under clause (b) of sub section (1) of section 52 as the probable date of return

CHAPTER XIII.—SPECIAL PROVISIONS AS TO POWERS-OF-ATTORNEY

92 (1) A power of attorney shall not be recognized as authorizing an agent to act on behalf of a principal under the Act unless it contains an expression or implied authority in that behalf

Recognition and authentication of power-of attorney

(2) Powers of attorney which do not contain or imply an authority to present for registration a document executed by or in favour of the principal or to admit execution of any document executed by him shall not be authenticated under clause (a) of sub section (1) of section 33

Explanation —A power of attorney authorizing the agent to execute and register a document shall not be authenticated

93. (1) All interlineations blanks, erasures and alterations in powers of attorney authenticated by a registering officer under clause (a) of sub section (1) of section 33 must at the time of authentication be detailed in a foot note by the registering officer

Note to be made of Interlineations etc.

Rules, Bengal

(2) When there are no interlineations, blanks, erasures or alterations in such a power of attorney, the fact must be mentioned in a foot note signed by the registering officer

(3) The said foot note must be copied in every case into the book of powers of attorney kept in Form No 17 in Appendix I

Authentication of power of-attorney

94. The authentication of power of attorney shall be made—

(i) in Form No 8 (a) in Appendix II when the principal executing the power appears at the registration office,

(ii) in Form No 8 (b) in Appendix II when the principal being exempted from appearance, the registering officer examines the principal on a visit under sub section (3) of section 33, and

(iii) in Form No 7 in Appendix II when the principal is examined on commission

Translation of power of attorney to be filed in certain cases

95 The presentant of a power of attorney which is presented for attestation or of an attested power of attorney produced by him as agent with or in connection with, a document presented for registration, shall, if the power of attorney is written or authenticated, or both written and authenticated, in a language not commonly used in the district, be required to file a translation in English, of the power of attorney or the endorsement of authentication or of the power of attorney with its authentication, as the case may be, such translation being certified to be a true translation and attested by the presentant

Endorsement when a special power-of-attorney is used

96. (1) Whenever a special power of attorney is used in a registration office for the purposes of section 32, section 34 or section 73 an endorsement shall be made upon it in Form No 9 in Appendix II, and it shall be returned forthwith to the party by whom it was presented

(2) In the case of general powers of attorney no such endorsement shall be required and they shall be returned, after inspection, to the parties by whom they were presented

CHAPTER XIV—PROCEDURE WITH REGARD TO WILLS.

Deposit of wills

97. (1) A will shall not be received for deposit otherwise than is prescribed by section 42, and any will received through the Post office shall be returned to the sender in an unstamped envelope

(2) The headings in Form No 8 in Appendix I shall, as far as practicable, be filled up in receipt granted under clause (b) of sub section (1) of section 52 For any will deposited under section 42 a note shall be entered on the receipt stating that the will is received for deposit under that section

(3) The Registrar shall explain to every person depositing a will that no steps will be taken by the Government to ascertain the date of the testator's death or to communicate with the beneficiaries after his death

(4) When a sealed cover is presented for deposit the endorsement in Form No 10 in Appendix II shall be recorded on the cover

Entries in Book No. 5.

98. Every entry made in Register book No 5 under the provisions of section 43 shall be signed in full and dated by the Registrar

Withdrawal of sealed cover containing will.

99. When a sealed cover containing a will is withdrawn under section 44 the fact shall be noted in Register book No 5 and the entry shall be signed by the person by whom the cover is withdrawn as well as by the Registrar, and the receipt referred to in sub rule (2) of rule 97 shall be returned by such person and filed in the Registrar's office

Opening of sealed cover containing will.

100. (1) When a sealed cover containing a will is opened under section 45 the fact shall be noted in Register book No 5 and the note shall be signed by the Registrar

(2) If a cover is opened under an order of a Civil Court the fact shall be mentioned in the said note

Documents to accompany wills forwarded to a Court.

101. When a will is forwarded to any Court under section 46, it shall be accompanied by—

(a) a memorandum of the fee for opening the cover and the charges (if any) for copying the will into Register book No 3, and

(b) a letter requesting such Court to levy such fee and charges and to remit them to the Registrar by whom the will is forwarded

Monthly examination of sealed covers containing wills.

102. Sealed covers containing wills deposited with a Registrar under section 42 shall be examined monthly and their condition on such examination shall be noted in such manner as the Inspector General of Registration may direct

Registration of revocation of will and authority to adopt.

103. A revocation or cancellation of a will or an authority to adopt shall be registered in Register book No 3

Wills registered or refused not to be destroyed but forwarded to Sadar office.

104. Wills registered or refused registration in a sub-registry office, which remain unclaimed for a period exceeding two years, shall be forwarded to the Registrar's office for safe custody, a note to that effect being entered against the original entry in the fee-book All documents so transferred shall be entered in the register (Form No 5 in Appendix I) prescribed by rule 8

Rules made under Section 69 of the Act.

MADRAS.

CHAPTER V.

(*Section* 19 *of the Act*)

LANGUAGES

Rules, Madras

14 The following languages shall be deemed to be commonly used in the district and sub districts named thereunder —

I —English

All districts and sub districts

II —Telugu

Districts of Ganjam East Godavari Vizagapatam, Kistna, West Godavari Guntur Nellore Cuddapah Kurnool Bellary, Anantapur, North Arcot and Chittoor

Sub districts of Denkanikota Hosur and Krishnagiri in the district of Salem

Sub districts of Madras West Madras Mylapore Triplicane, Sembiyam, Ponneri Sattyavedu and Tiruvallur in the district of Madras Chingleput

III —Tamil

Districts of Madras Chingleput North Arcot Chittoor, Villupuram, Cuddalore Negapatam Tanjore Tinnevelly Palamcottah, Madura, Ramnad, Trichinopoly Erode Salem and Coimbatore

IV —Kanarese

Districts of South Kanara Bellary and Anantapur

Sub-districts of Hanur, Kollegal and Talavadi in the district of Erode

Sub districts of Hosur and Denkanikota in the district of Salem

V —Malayalam

Districts of Calicut Palghat and Tellicherry

Sub-districts of Hosdrug Kasargod and Trikarpur in the district of South Kanara

Sub-district of Gudalur in the district of Coimbatore

VI —Hindustani

Sub-districts of Madras, West Madras, Mylapore, Triplicane and Sembiyam in the district of Madras Chingleput

Sub-district of Kurnool in the district of Kurnool.

Sub districts of Arcot and Vellore in the district of North Arcot.

Sub-district of Chittoor in the district of Chittoor

Sub-district of Trichinopoly in the district of Trichinopoly

VII—Oriya **Rules, Madras**

District of Ganjam

15. (i) The stamp vendor's endorsement on a document shall be considered to be a part of the document and if it is in a language not understood by the registering officer the party concerned shall be required to file a translation

(ii) When a power-of-attorney is presented for attestation or when an attested power-of-attorney is produced by an agent with or in connexion with a document presented for registration and the power of attorney is written in a language not commonly used in the district the registering officer may, if he does not understand the language, demand of the presentant a true translation of the power in English or in a language commonly used in the district

(iii) The translation shall be certified to be a true translation and shall be signed by the presentant

(iv) No fee is leviable for filing a translation in cases falling under this rule

CHAPTER VII.—PRESENTATION AND EXAMINATION OF DOCUMENTS

Sections 19 20 21 22 28 29 32 40 and 52 of the Act

19. A document relating to immoveable property which is situate partly within and partly without the areas to which the Indian Registration Act applies may be registered in the office of any registering officer within whose jurisdiction any portion of the property is situate but in such a case the certificate of registration shall show that the registration has been effected only as regards that portion of the property which lies within the areas where the Registration Act is applicable

19A. A document relating to immoveable property situated wholly outside British India or outside the tracts to which the Indian Registration Act applies may be registered by a registering officer in British India in Book 4, but the presentant shall be warned by a note below the registration certificate that its registration does not affect the right in the property itself

20. A registering officer having jurisdiction to accept a document for

presentation of the document but before completion of its registration But when the document affects immoveable property a memorandum shall be sent, without levy of any fee, to the office to whose jurisdiction the village has been transferred, for the purpose of being filed in file book I of that office

Rules, Madras

When however, after refusal to register by a registering officer, the village in question is transferred whilst the document is on appeal or in a suit before a civil Court, to the jurisdiction of another Sub Registrar, the document, if the Registrar or the Court orders that it shall be registered, shall be re presented for registration to the officer to whose sub district the village has been transferred

21. A document for registration other than a document forwarded under section 89 of the Act shall be presented in person, with prescribed fees, direct to the registering officer and not to a clerk or peon A document shall not be accepted if transmitted by post

22 Every document shall before acceptance for registration be examined by the registering officer to ensure that all the requirements prescribed in the Act and in these rules have been complied with If there is any informality in presentation of a nature which can be remedied, the registering officer shall give the party such information as may be necessary and return the fees and the document with a view to the document being presented again in due form For instance, in cases such as those mentioned below he should explain the defect to the presentant if the document is presented in the wrong office if an agent has come without a power of attorney or without such a power as the Act requires, if the description of the property is either insufficient for purposes of identification or does not fulfil the requirements of rules 16 to 18 if the document is not accompanied by a translation or by copy of a map when such translation or copy is necessary if there are unattested interlineations, alterations erasures or blanks which the registering officer considers should be attested by the initials or signatures of the executants, if the date of execution is not given in the document or if it is anterior to the date of purchase of the stamp paper on which the document is written, or if the date is given according to both the British and the Indian calendars and these dates do not tally The action of the registering officer in this respect shall be confined to advice and he shall not himself alter the document in anyway

23. Each important interlineation, erasure or alteration occurring in a *document shall whenever possible, be caused to be noted or described at the* foot of the document and to be signed by the executant before the document is accepted for registration This course is, however, unnecessary in respect of a document executed solely by a public functionary as such or of a document received under section 89 of the Act In such cases it will suffice if the interlineation erasure or alteration is attested by the officer concerned

24. Every copy of a map or plan accompanying a document shall be *certified to be a true copy and shall be attested by the signature of the person* executing the document or of his duly authorized agent

25. When a document is presented for registration in duplicate or triplicate the registering officer shall treat the duplicate and triplicate as such if they are exact reproductions of the original and bear the same date Should any discrepancy be detected the presentant shall be required to reconcile it before the document is accepted for registration If the original contains a map or plan a copy shall be annexed to the duplicate and to the triplicate **Rules, Madras**

26. (i) A document which relates to land situated in a district or portion of a district to which the rule framed by the Local Government under section 22 (1) of the Act has been made applicable shall before it is accepted for registration, be checked with the survey numbers and sub divisions in the subsidiary indexes maintained under rule 125 and also, when necessary with the settlement registers in order that the registering officer may cause incorrect or fictitious numbers entered in the document to be rectified

(ii) If a survey number or a sub division entered in a document is not found in the subsidiary indexes or settlement registers the registering officer shall if necessary make a reference to the Revenue Departments

(iii) If the sub-divisions of a field are found in the subsidiary indexes or settlement registers and the field is described in the document without any reference to any sub division, the document may be returned for rectification

27. (i) If there are no impediments such as those mentioned to the acceptance of a document for registration or if the document is presented again after any such impediments have been removed the registering officer shall endorse on the document the date the hour and the place of presentation and take the signature of the presenting party to such endorsement

(ii) If, however, any of the impediments referred to above is discovered after the presentation endorsement has been made on the document the latter may be returned for correction or amendment if the party so desires with an endorsement to that effect Should the document be presented again a re presentation endorsement shall be made

28. (i) If the period prescribed for presentation has elapsed, but the document is still admissible on payment of a fine the registering officer shall if he is a Sub Registrar, suspend its registration pending the orders of the Registrar

(ii) If the document is chargeable with duty under the Indian Stamp Act, 1899, and is not duly stamped, the registering officer shall impound it under section 33 of that Act and forward it to the Collector, registration being suspended

Rules, Madras

special notice should be given, (b) to be posted in a conspicuous part of the registration office, and (c) to be published (i) in the Gazette of the district in which the testator or donor lived, (ii) in the Gazette of the district in which the property of the deceased is situated, and (iii) in the villages where the testator or donor lived, where interested parties may reside and where the property of the deceased is situated The cost of the service of the notice and of its publication shall be levied in advance from the person who presents the document for registration

70. If a person presenting a will or an authority to adopt, or a person who objects to the registration of such a document on the ground that it was not executed by the testator or donor or that the testator or donor is not dead or that the person presenting the document is not entitled to present the same under section 40 of the Act, desires that witnesses should be summoned, the request shall be complied with and the procedure prescribed in Chapter XII shall be followed

71. (i) As each person is examined his signature shall be obtained on the document below the endorsement of presentation in the following form —

The witnesses whose signatures are affixed below have been examined under clause (2) of section 41 of the Indian Registration Act, 1908, in reference to the document —

E F with addition
G H do
I J do

27th January 1914 — *Signature of Registering Officer*

K.L. with addition
M N do
O P do

28th January 1914 — *Signature of Registering Officer.*

Q R with addition
S T do

6th February 1914 — *Signature of Registering Officer*

(ii) If, after the conclusion of the examination of the witnesses, the registering officer should decide to register the document, an endorsement in the following form shall be made on it and its registration shall be completed —

I am satisfied from the evidence of the witnesses whose signatures appear above —

(a) that the will (or authority to adopt) was executed by the testator,

(b) that the testator (or donor) is dead,

(c) that the person presenting the will (or authority to adopt) is entitled to present the same

Date — *Signature of Registering Officer*

(iii) Should the registering officer decide to refuse registration, the usual endorsement of refusal shall be entered on the document

Rules, Madras

72. (i) A registering officer when enquiring under section 41 (2) into the execution of a will or of an authority to adopt shall invariably, before registering the document or refusing registration, prepare and place on record a memorandum in English containing a summary of the evidence and the reasons for registration or refusal as the case may be. A copy of any such memorandum prepared by a Sub Registrar shall be submitted to the District Registrar forthwith.

(ii) When a will or an authority to adopt is refused registration the refusal order to be entered in Book 2 shall be a reproduction of the memorandum.

73. A will or an authority to adopt presented for registration after the death of the testator or donor may be returned to the presentant unregistered if he so desires unless it appears that the document is forged.

74. A revocation or cancellation of a will or of an authority to adopt shall be treated as a document of testamentary character and shall be registered in Book 3.

75. (i) Wills registered or refused registration in a Sub Registry office which remain unclaimed for a period of over two years shall be forwarded to the Registrar's office for safe custody, a note to that effect being entered against the original entry in the office returns.

(ii) If the person entitled to claim the return of a will applies to a Sub Registrar for its return after the document has been transmitted to the Registrar's office, he should be advised to obtain it from the Registrar direct. If he is unwilling to do so, the will should be obtained from the Registrar by the Sub-Registrar and returned to the person and a note of its receipt from the Registrar's office and return to the person shall be entered in the office returns.

Rules, Madras

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28th January 1914 *Signature of Registering Officer.*

Q R with addition
S T do

6th February 1914 *Signature of Registering Officer*

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I am satisfied from the evidence of the witnesses whose signatures appear above —

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(b) that the testator (or donor) is dead,

(c) that the person presenting the will (or authority to adopt) is entitled to present the same

Date *Signature of Registering Officer*

(iii) Should the registering officer decide to refuse registration, the usual endorsement of refusal shall be entered on the document

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(ii) If the person entitled to claim the return of a will applies to a Sub Registrar for its return after the document has been transmitted to the Registrar's office, he should be advised to obtain it from the Registrar direct If he is unwilling to do so, the will should be obtained from the Registrar by the Sub Registrar and returned to the person and a note of its receipt from the Registrar's office and return to the person shall be entered in the office returns

Rules, Bombay

33. On receipt of the fees the R O shall endorse on the face of the document a note in the following form —

Received fees for—	Rs
Registration	
Copying (folios including endorsements)	
Extra for registration by D R	
Attendance for registration at private residence	
For copies or memo under Ss 64, 65, 66 and 67.	
Fine under S 25	
Fine under S 34	
For the return of the document by registered post	
Total Rs	

Note —When no fees are leviable under any one of these heads it may be omitted

A B,
Registrar or Sub Registrar

The duty of recording the endorsements may be delegated as in Rule 30 (2)

34. In considering whether a presented document should be accepted for registration the R O should not concern himself with its validity, but should be careful only to see that it fulfils the following requirements of the law (namely) —

(i) that it is properly stamped,

(ii) that it is presented within the proper time, and in a proper office,

(iii) that it is presented by a competent person,

(iv) if it relates to immoveable property, that it is not open to objection under S 21 or 22,

(v) that when S 19 applies its provisions have been satisfied, and

(vi) that any interlineations, blanks erasures or alterations appearing in the document are attested by the signature or initials of the person or persons executing the same as required by S 20

(2) If the presenting party refuse to pay the prescribed fees or fines the same having been demanded under S 80 of the Act, the R O shall refuse to register the document

35 A R O visiting a private residence or jail under Ss 31, 33 or 38 and receiving his travelling expenses from the person at whose application such visit is made, shall give to the applicant a receipt for the sum received and, if a S R, shall immediately report the amount to the D R Such receipts shall be in the form App M

(2) A receipt in the same form shall also be given whenever a document is presented for registration or deposit or whenever payment of any fee or fine is made to a R O

36. If there be no objection, on the face of the document, to its being accepted for registration, the inquiry prescribed in S 34 shall be proceeded with, and if the document is admitted to registration, the endorsements and certificate prescribed by S 58 to 60 shall be made in the manner shown in App X **Rules, Bombay**

(2) Admission of receipt of consideration shall only be endorsed when such admission is voluntarily made.

(3) If an executing party admits execution, but takes occasion to deny the receipt of consideration in whole or in part, registration is not on that account to be refused, but the denial of receipt of consideration shall be mentioned in the endorsement

(4) When the R O is acquainted either with the persons admitting execution or with the witnesses to their identity, he shall mention the fact in the endorsements Provided that when a document is presented for registration which is not duly stamped and the R O impounds it at once under S 33 of the Stamp Act, 1899, the R O shall not forward the document to the Collector until the executant or executants shall have appeared before him for the purpose of his enquiry under S 34, or until the expiration of the period prescribed by S 34 of the Act, whichever may happen first The endorsements required under Rules 30 and 33 and under S 58 shall be made on the document before it is forwarded to the Collector but it shall not be copied or certified as registered until it has been returned to the R O with the Collector's certificate that the proper stamp duty has been paid thereon

37. In taking evidence regarding the identity of parties appearing before him the R O should prefer witnesses of respectability or well known persons, such as Government officers, Vakils ordinarily practising at the station, or persons with whom he is personally acquainted

38. Commissions issued under S 33 or 38 and the returns thereto shall be recorded in a separate file Such commissions should be in the following form —

"To

A B

Whereas the accompanying power of attorney (or document), dated and purporting to have been executed by *C D.* has been presented for authentication (or registration) in this office, and whereas it is necessary that it should be ascertained whether, it has been voluntarily executed by the person by whom it purports to have been executed, you are hereby directed to take the examination of upon the interrogatories hereunto attached, and to return this commission with the examination of the said to this office on or before the day of

Given under my hand and seal this day of 19

Seal.

(Signature of Registrar or Sub-Registrar)"

Rules, Bombay

39. When an application for a direction under S 25 or under the proviso in S 31 is lodged with a S R, the S R shall, on payment being made to him of the full amount of the fine that may be imposed by the D R if he grants the direction at once proceed with the inquiry prescribed in Sub section (3) clauses (a) (b) and (c) of S 34, in anticipation of the order that may be passed by the D R upon the application

Provided that—

(1) nothing in this rule shall be deemed to affect the power of the D R to refuse such application

(2) if such application is refused or if the amount of fine imposed by the D R when granting the direction is less than the full amount imposable by him the amount of fine paid to the S R or the excess, as the case may be shall be refunded to the party who paid it Provided that when a direction is granted under S 25 but the *D R refuses to order registration under the proviso to S 34 the* fine imposed under S 25 shall not be refunded

40. Fines imposed under S 25 or 34 of the Act shall be of the following amounts, namely —

(1) If the delay does not exceed one month—not exceeding 2½ times the proper registration fee

(2) If it exceeds one month but does not exceed two months—not exceeding five times the proper registration fee

(3) If it exceeds two months but does not exceed three months—not exceeding 7½ times the proper registration fee

(4) If it exceeds three months but does not exceed four months—not exceeding ten times the proper registration fee

41. On every document admitted to registration, a blank space is required for the endorsements and certificate prescribed by S 58 to 60 A space 6 inches in length and 5 inches in breadth will ordinarily be sufficient but when the executing parties are numerous the space should be proportionately larger If in any case the blank space on the document is insufficient, an extra piece of blank paper should be firmly gummed on to it, so as not to overlay any of the matter originally written in the document and the R O when making the endorsements or certificate should take particular care that they are not written wholly on the piece attached, but partly on the document itself and partly on the attached piece across the junction of the two

42. When a document admitted to registration is being copied, as required by S 52, in the appropriate Register Book, the value of the stamp and the stamp vendor s endorsement shall invariably be transcribed at the beginning of the copy in such book and also on the copies prepared under S 64 to 67, but these shall not be taken into account when calculating the copying fees

43. In Book No I and in supplement to Book No I, Parts I, III and IV optional registrations shall be distinguished by the letter "B" appended to the serial number The absence of any distinguishing letter will indicate compulsory registration **Rules, Bombay**

(2) For the purpose of determining whether the registration of a document in which the value of the interest affected is not specified is compulsory or not, the value of the stamp affixed thereto shall be taken to indicate the value of the interest according to the provisions of the law in force relating to stamped documents

44. The following items are to be copied in the column of Books Nos I III or IV (as the case may be), headed—

"Endorsements and Certificate" (namely) —

(1st) the serial number endorsed on the document under Rule 31,

(2nd) the presentation endorsement referred to in Rule 30,

(3rd) the fee endorsement required by Rule 33,

(4th) the endorsements and certificate required by S 58 to 60 in the order in which they occur on the document

45. Errors, erasures, interlineations, etc, in original documents and in the endorsements made on them must be copied into the Register Book exactly as they appear in the documents and in the endorsements Marginal notes shall be written in column I explanatory of such errors etc, in the following manner in the case of interlineations additions or misspellings, by a single mark X in red ink over them with a similar mark X" in red ink, in column I and the word sic, or the corresponding word in the vernacular (asal) in the same column, in the case of an erasure, by two marks XX, in red ink, one at each end of such erasure with similar marks in column I and the word erasure or corresponding word in the vernacular All such notes must be attested by the initials of the R O

(2) The same procedure shall also be adopted in the case of copies granted under S 57 or copies despatched under S 65 66 and 67 of the Act

46. When the copy in the Register Book has been completed, it shall be carefully compared with the original and the R O shall certify under his signature that it is a true copy

(2) Below the copy in the Register and above the True Copy Certificate, the copyist and the comparer shall endorse the words "copied by me" and compared by me' and shall attach their signature thereto even if they be the R Os

"(3) All corrections, interlineations, or additions made at the time of copying shall be bracketed in red ink and attested by the R O on each side All these corrections, interlineations, or additions shall be numbered in red

Rules, Bombay ink consecutively and the total number of mistakes shall be classified under three different heads (1) corrections, (2) interlineations, (3) excess matter written by mistake by the copyist

The form of certificate shall be as follows —

'True copy'

No of mistakes —8 (eight) (1) and (7) interlineations, (2) (3) (5) and (6) corrections, (4) and (8) excess matter written by mistake (Initials of the R O)*

(Signed) A B,
Registering Officer

*Note —The R O shall affix his initials exactly at the point where the true copy certificate ends

(4) The duty of attesting copies of documents in the Register Book as well as copies forwarded under Ss 66 and 67 and of noting and attesting errors erasures interlineations etc under Rule 45 may be delegated as in Rule 30 (2)

(5) In the case of the following offices the aforesaid duties will be performed by the S R shown in col 3 below —

District	S R O	S R
1	2	3
Karachi	Mirpur Sakro	Tatta
	Ghora Bari	Do
Do	Kohistan	Kotri
Thar and Parkar	Umarkot	Mirpurkhas
Ahmedabad	Ghoga	Dhandhuka
	Modasa	Prantij
Thana	Wada	Bhivndi
	Mokhada	Do
Kolaba	Uran	Panwel

*Note —This rule shall also apply to copies granted under S 57 of the Act

47. If the copy of a document occupies more than one page of the Register Book the marginal entries shall be made once only, with the exception of the serial number which shall be repeated on every page The marginal entries shall in no case be made along side of the copy of any document other than that to which they relate Where owing to the document being short the marginal entries in the Register Book extend lower down in the columns appropriated to them than the copy of the document in the column appropriated to it the blank space left in the last named column shall be cancelled by cross lines in ink being drawn over it

48. When a document is presented for registration in duplicate or triplicate the necessary endorsements to be recorded under Ss 52, 58 and 59 shall be endorsed on the original as well as on the duplicate or triplicate Copy of the original shall be made in the Register Book, the duplicate of the triplicate shall not be copied at all but a note stating the number of duplicates or triplicates presented along with the original shall be made below the entry of the original in the Register Book The registered No, pages and column of the Register Book to be recorded in the certificate under section 60 shall be one and the same for the original as well as for the duplicate or triplicate **Rules, Bombay**

(2) A copy or memorandum to be forwarded under Ss 64 to 67 shall not be forwarded in respect of a duplicate or triplicate but shall be forwarded in respect of the original only A note of the number of duplicates or triplicates presented along with the original shall however, be made in the 'Remarks' column in the memorandum and below the true copy certificate on the copy

(3) Similarly indexes shall be prepared only in respect of the original

(4) If the document is accompanied by a map or plan the duplicate or triplicate shall also be accompanied by a copy of the same But in the supplement to Book No I, Part II, only one copy of the same as regards the original alone, shall be filed So also for forwarding to D Rs of other jurisdictions copies sufficient for the original only shall be presented and not for duplicates or triplicates

(5) The fee to be levied in such cases shall be as follows —

> Besides the usual fees for the original an *ad valorem* registration fee subject to a maximum of Rs 2 shall be levied in respect of the duplicate or triplicate No copying fee either for copying in the register or for making copies to be forwarded under Ss 65 to 67 shall be levied in respect of the duplicate or triplicate Similarly memorandum fee shall not be levied

49. On every map or plan received under S 21 the R O shall endorse "map or plan which accompanied the document, registered No at page volume of Book No I," and every R O entering its copy in the supplement to Book No I Part II, shall make a note in Book No I, below the true copy certificate of the document to which it belongs as follows —

> "Copy of map or plan accompanying is entered at page of volume of supplement to Book No I, Part II"

(2) These endorsements shall be dated and signed by the R O

(3) The copies of maps or plans shall be attested by the signature of the persons executing the document or their agents

Rules, Bombay

50. When under sub section (2) of S 30 the S R of Bombay registers *a document written in any language other than English and relating to property* situated beyond the limits of the Bombay Presidency, the copy of such document which under S 67 it is his duty to forward to every D R within whose district any part of the property to which such document relates is situated shall be accompanied by an English abstract certified under the signature of the said S R of Bombay to be a true abstract

51. In cases of re registration under S 24 the document shall be copied into the Register in extenso and a number shall be assigned to it, precisely as if it had not been previously registered but a note in red ink to the effect re registered at page volume of Book No ", shall be made in the Register to the first copy of the document in the column headed Endorsements and Certificate below the R O's signature, and such note shall be dated and signed by the officer who re registers the document The presentation endorsement (Rule 30) shall be repeated on *representation*

52. (1) When after the registration is completed within the meaning of S 61, the document is returned the signature of the recipient shall be taken in the Day Book (App I) and the receipt given under S 52 shall be returned to him after endorsing on it the date of its return, which shall be initialled by the R O or a clerk of the grade of a S R when the R O is a D R or by a Head clerk where the R O is the S R of Bombay

(2) Where the presenter has signified a wish that the document should be returned to him by post the receipt should be handed over to the presenter when the document has been accepted for registration with an endorsement thereon that the document will be returned by post which should be initialled by the R O or his Clerk of the grade of a S R where the R O is a D R or by a Head clerk when the R O is the S R of Bombay The document shall then be returned in a registered cover with a form of acknowledgment The Registration receipt granted by the post office and the acknowledgment of the presenter, when received shall be separately filed and their numbers noted in column 13 of the Day Book

53 Documents of which the registration is not complete and registered documents pending delivery, shall be kept separate

(2) A list of documents, which had been registered, and have remained unclaimed for more than one month from the date of completion of registration shall be hung up to public view in the form App O in the office of every R O

(3) If a document remains unclaimed for one calendar month after its registration or after registration of the same has been refused, the R O shall on the day following the last day of such month, issue a notice in form

Rules, Bombay

App P to the presenter of the document, informing him that if it be not claimed within a further period of one calendar month from the date of such notice, an extra fee at the rates prescribed in Article 22 of the Fee Table will be levied before such document can be delivered to him Such notices shall be sent by post, post paid

54. When a S R registers a document relating to immoveable property not situate within his own sub-district, but in that of another S R and the mistake is brought to notice, he shall direct the presenter to present it again in the proper office where it shall be registered afresh without additional charge

55 The copy of reasons furnished under Secs 71 and 76 shall be a copy of the entries in Book No II relating to the document of which registration has been refused

56. Fees are to be levied for summonses issued under either S 36 or 75 at the rates prescribed in the Fee Table, prepared by Government

(2) For the purposes of sub section (4) of S 75 Registrars will themselves issue process for the attendance of witnesses In the district of Bombay the Registrar will himself arrange for the service or execution of such processes elsewhere they should be sent to the Mamlatdar, Mukhtyarkar or Mahalkari for the purpose of being served or executed

57. A copy of every order passed by a Registrar in appeal or application shall, whether registration be thereby ordered or refused, be sent to the S R from whose decision the appeal or application was made, and the substance of the order, with a brief statement of the reasons therefor in case of refusal, shall be copied by the latter in column 5 of Book No II (App D, see Rule 17)

XIX.—Destruction of Documents.

75. (1) A notice in the form of App X shall be issued in cases of documents of which destruction is authorized by S 85 if they remain unclaimed for a period exceeding two years from date of registration or refusal This period shall in the case of adjourned documents be reckoned from the date on which the proceedings were adjourned for the last time After expiration of the period of notice the document shall be forwarded to the D R for destruction, who will communicate to the S R the date on which it was actually destroyed

(2) In cases of destruction of *registered* documents a note recording the destruction shall be entered in the Register Book at the foot of the copy of the document In cases of documents refused registration, the note shall be recorded in Book No II in the column "Reasons for refusal to register"

Extracts from the Registration Manual—Part II.

THE UNITED PROVINCES.

Rules, United Provinces

Territorial divisions

170. The description of the territorial division required by section 21 of the Act shall be the name of the village, pargana, tahsil and revenue district in which the house or parcel of land is situate, the name of the *thok* or *patti* being prefixed when the property is situated in a *pattidari* or *bhayachara* village

Entries relating to property within the registering officer's jurisdiction should be made in black ink, the others in red ink in order to facilitate the preparation of index No II

Registering officers not concerned with validity of documents

182. Registering officers should bear in mind that they are in no way concerned with the validity of documents brought to them for registration, and that it would be wrong for them to refuse to register on any such grounds as the folllowing—(1) that the executant was dealing with property not belonging to him, (2) that the instrument infringed the rights of third persons not parties to the transaction, (3) that the transaction was fraudulent or opposed to public policy, (4) that the executant had not agreed to certain conditions of the document, (5) that the executant was not acquainted with the conditions of the document, (6) that the executant declared that he had been deceived into executing, (7) that the executant is blind and cannot count These and such like are matters for decision, if necessary, by competent courts of law, and registering officers, as such have nothing to do with them If the document be presented in a proper manner, by a competent person, at the proper office, within the time allowed by law, and if the registering officer be satisfied that the alleged executant is the person he represents himself to be, and if such person admits execution, the registering officer is bound to register the document without regard to its possible effects But the registering officer shall make a note of such objections of the kinds mentioned in grounds (1) to (7) above, as may be brought to his notice in the endorsement required by section 58

Denial of receipt of consideration

183. If any person admits the execution of a document presented for registration, but denies the receipt in whole or part of the consideration recited therein, registration shall not be refused because of such denial, but a note of the denial shall be made in the endorsement required by section 58

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184. If after the presentation of a document for registration the executant thereof does not appear, and the presenter neglects or refuses to enforce his attendance under part VII of the Registration Act the document may be returned if claimed back In such cases the refusal to register should be recorded after the four months limit prescribed in section 34 has expired, and the document is to be sent to the Registrar for safe custody under rule 139

Unwillingness to register

185. If the executant appears and admits execution and his identity is established, the registration should be completed even though one or both of the parties may after this stage desire to withdraw the document from registration If after admission of execution the executant refuses or neglects to sign the endorsement the registering officer should note this refusal as prescribed in section 58 of the Registration Act

186. If after admission of execution and the necessary identification of the parties the presenter (irrespective of the executant's action) refuses to proceed or to sign the endorsement, the registration should nevertheless be completed and a note of the refusal to sign endorsed on the document The document, if not claimed, should be kept one month under rule 139 and then sent to the Registrar

187. The case of simple denial of receipt of consideration is met by rule 183 If the document is not claimed by the person who presented it, or some one authorized by him to receive it (section 61), it should be retained one month under rule 139 and then sent to the Registrar

188. Orders refusing to register should be made only after due care and consideration, and if the impediment to registration be a mere informality or defect capable of remedy, opportunity should always be given to the parties to correct the flaw In such cases registration shall be deferred, and no final order of refusal shall be made until the document concerned becomes time barred

Corrections of defects capable of remedy

189. When, under section 35 of the Registration Act, registration is admitted as to some of the parties to a document, but is refused as to the rest, the registering officer shall endorse thereon an order in this form —

Partial refusal

" Registration refused as to A B and C D "

He shall record the reason for this partial refusal in his book No II, but in all other respects he shall proceed with the registration of the document in the ordinary manner This register shall contain the headings prescribed in Form No 2, Appendix I

Rules, United Provinces

Wilful refusal or neglect to attend equivalent to denial of execution

190. The Calcutta High Court has ruled under Act III of 1877 in the case of *Radha Kissen v. Choonnelal Dat* (I. L. R., V Cal., 445) that refusal to admit execution of a document even if it is not made in the presence of the registering officer is a denial of execution within the meaning of the Registration Act, and so also is a wilful refusal or neglect to attend and admit execution, and when such refusal or neglect occurs a suit will lie under section 77 for the purpose of having the document registered. It is to be noted however that in that case summons had been personally served and there was evidence that the executant understood what he was required to do.

Procedure on acceptance.

Procedure on acceptance for registration. Identity of persons appearing

247. When a document is accepted for registration the prescribed fees should be levied and the necessary entries made in the fees book. The counterfoil receipt should then be prepared and the receipts for the document and the fees delivered to the presenter. The registering officer should then, with as little delay as possible enquire whether the document was executed by the alleged executant, and satisfy himself as to the identity of the person appearing before him to admit execution. *If the presenter be the executant, or his representative, assign* or agent or if such executant representative assign or agent be present, the registering officer shall make the necessary enquiry at once.

When the registering officer is not personally acquainted with executants he shall require them to produce persons to testify to their identity. Such persons shall, if possible, be *persons known to the registering officer* personally or failing these persons of apparent respectability. Witnesses who are unknown to the registering officer shall have their thumb impressions recorded as in the case of executants (*vide* rule 251, so far as it is applicable). Any distinctive physical peculiarity or marked deformity in a party or witness should be noted in the endorsement. But a descriptive roll need *not be recorded except in suspicious cases. This procedure must be in* addition to and not take the place of, the procedure required by section 34, that the registering officer shall satisfy himself of their identity. Such descriptive rolls afford in themselves no proof of identity.

Identity of obscure and unknown persons

248. The registering officer must take care that the witness is really able to *identify the person to be identified*. To this end the witness should be clearly and specially asked whether that person is or is not the person he professes himself to be, and what the nature of his—the witness'—acquaintance with that person is. The testimony of an identifying witness should

be rejected if he has had no personal acquaintance, with the person identified but has merely been told his name for the purposes of that identification Care should be taken that identification does not become a trade among the petition writers menials and hangers on of the office The testimony of persons who made such a trade should not be accepted

Identity of parda nashin ladies

249. In the case of documents executed by *parda nashin* ladies, registering officers should be careful to obtain an admission of execution from the executant s own lips The mere statement of the relative or other persons accompanying her is not sufficient The lady should be seen and identified by some person acquainted with her appearance and the name and relationship of such person to the executant should be noted in the endorsement The terms of the document should be explained to the executant, and if, while admitting execution, she objects to any of the terms, such objection should be noted The instructions apply to the case of all documents executed by *parda nashin* ladies, whether registered at the registration office or on visit or by commission at the executant s residence

Admission by, and identification of, executants

250. If execution by the alleged executant is admitted and the registering officer is satisfied on the point of identity, he should record on the instrument the endorsement required by section 58 in one or other of the forms given in chapter XVIII, and such endorsement should be signed by the registering officer, the executant, and all the witnesses examined, but no such endorsement is necessary on a copy of a decree or order, or of a certificate sent under section 89 of the Registration Act

Thumb impressions

251. In addition to all or any of the directions laid down in the Act or Rules made thereunder for securing the identification of executants of documents, registering officer shall take the thumb impressions of all executants of documents, whether personally known to them or not, in the following cases —

(1) Registrations under section 17, clauses (a), (b), (c) and (d) of the Act

(2) Registrations under section 18, clauses (a), (b) and (c) of the Act, " and also under clauses (d), (e) and (f) in the Meerut and Rohilkhand divisions only "

(3) Powers of attorney authenticated under section 33.

(4) Of all *parda nashin* women

This rule may be relaxed only in the case of persons of position, regarding whose identity there can be no doubt or room for suspicion, notwithstanding that such persons are not personally known to the registering officer In the case of *parda nashin* women the impression shall be made either in the

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presence of the registering officer or of the person who identifies the woman, and in the latter case the name of the person who takes the impression should be noted

The impression taken shall be of the left thumb If the left thumb be defective or injured, the right thumb, or any other digit may be used, and a note made in the register and on the document of the particular digit employed If none of the above methods be possible special care should be taken that the directions contained in rule 247 are strictly complied with

The impression shall be taken (1) on the document, in a clear space immediately under the signature of the executant to the endorsement required by section 68 of the Act, and (2) in Register No VIII (Form No 16, Appendix 1) which shall be maintained in all registration offices

The apparatus to be employed will be supplied by the office of the Inspector General of Registration, and shall ordinarily consist of a tin box containing (1) a roller, (2) a tin plate (3) a pot of printer's ink, and (4) a phial of turpentine The mode of taking impressions is as follows —

(a) A small quantity of ink should be applied to the plate and worked with the roller till it forms an even layer on the surface, which must be so thin as to allow the plate to show through it

(b) The executant s left hand should be taken and the ball of the thumb, after being wiped, should be laid on the inked plate and rolled from side to side (not rubbed) and pressed gently, but firmly with the operator's own hand until sufficiently inked, and the inked finger should then be placed and lightly and carefully rolled on the paper on which the print is to be taken, in such a way that the pattern on the whole ball of the thumb from side to side, is clearly impressed on it It must be specially borne in mind that any reverse movement, either at the time of applying or removing the thumb, will cause a smudge and spoil the impression

(c) The roller and plate must be thoroughly cleaned daily

Some difficulty is occasionally experienced in obtaining satisfactory thumb impressions when the executant is a *parda nashin* woman or an ignorant agriculturist In such cases it is advisable to take first a few impressions on a piece of waste paper and not to take an impression on the document or on the register until the executant and the operator (when as in the case of a *parda nashin* woman the registering officer is not the actual operator) are fully acquainted with the method to be employed In cases when the thumb impression taken on the document or on the register is blurred or indistinct, a second or, if necessary, a third impression should be taken alongside

the first, a note being made in the register and signed by the registering officer whenever more than one impression is taken on the document itself

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Identification by patwari

252. Under rules 31 (2) Province of Agra Identification by Patwaris, and 39 (2) Oudh of the Patwaris Rules—Board's Extant Circulars Part III—all patwaris are required when attending any court or upon any official to record in their diaries the fact of attendance the cause of attendance and the name and designation of the court or official These rules apply to patwaris when attending the offices of Registrars and Sub Registrars for purposes of identification in registration proceedings It should accordingly be the practice for registering officers to require any patwari attending a registration office for the purpose of identifying a person executing a document to note the particulars referred to above in his diary such entry being authenticated by the signature of the registering officer Any neglect or refusal on the part of a patwari to produce his diary should be brought to the notice of the Collector or Deputy Commissioner of the district Sub-registrars should address the Registrar of the district who will take the necessary action in the matter

Inquiry as to consideration

253. It will be observed that the endorsement just mentioned is to contain, amongst other particulars, any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document and any admission of receipt of consideration in whole or in part, made in his presence in reference to such execution Although the registering officer is required by law to question the alleged executant as to the fact of execution he is under no legal obligation to question him as to the fact of receipt of consideration At the same time such questioning would not be inconsistent with the provisions of the Act

Summons for appearance of executants or witnesses

254. If the alleged executant or his representative assign or agent be not present and if it be necessary to summon such person or any other person whose presence or testimony is necessary where the registering officer is also either a Judge or Revenue officer, he shall issue processes as such District Judge or Revenue officer, as the case may be Where the registering officer is neither a District Judge nor a Revenue officer, the necessary process shall be issued by the tahsildar within whose revenue jurisdiction the office of the registering officer is situate The appearance by the executant before the registering officer must be within the time prescribed in section 34 of the Act

Law as to summoning and attendance of witnesses

255. The law in force as to the summoning and attendance of witnesses is contained in order XVI, Schedule 1 of the Code of Civil Procedure, and the rules in force for the remuneration of witnesses in chapter XIII of the rules of

Rules, United Provinces the High Court of Judicature for the North Western Provinces of the 18th January 1898 and in rules 158 to 165 of the Oudh Civil Digest Volume I of 1912

262 If the person by whom the document purports to be executed deny its execution or if he appear to the registering officer to be a minor * an idiot or a lunatic or if he be dead and his representative or assign denies its execution the registering officer if a sub registrar is bound to record an order of refusal to register A sub registrar on any such denial has no authority to enquire into the fact of execution but a Registrar may do so either on appeal from the order of the sub registrar under section 73 or when the denial is made before him under section 74

Procedure on denial of execution &c

* NOTE to Rule 262 —For the purposes of the Registration Act all persons domiciled in India being British subjects of whatever race or religion are to be considered minors until they have reached the full age of eighteen years [*vide* Government of India No 535 (Home Department) dated the 16th April 1897]

263 Section 71 of the Act prescribes that when a sub registrar refuses to register a document except on the ground of want of jurisdiction he shall make an order of refusal and record his reasons in book No II and endorse the words Registration refused on the document On application made by any person executing or claiming under the document the sub registrar shall without payment and unnecessary delay give him a copy of the reasons so recorded The words without payment refer to copying fees and not to stamps

Copies of reasons for refusing to register

264. When a document purports to have been executed by more than one person the process described above must be observed in the case of each but it is not essential that all the alleged executants should appear before the registering officer simultaneously The identification and admission of as many as are present should be at once recorded and registration of the document be postponed until the appearance subsequently of the others In such case a single fee will be charged and not a separate fee for each executant or appearance

Procedure when there are several executants

Procedure on admission to Registration

265 When a document has been admitted to registration it should be made over to the registration muharrir to be copied into its appropriate book and the registering officer should see that no unnecessary delay occurs and that documents are always entered in the books in the order of their admission The entry should be an exact copy of the

Procedure when a document is admitted to registration

Rules, United Provinces

document registered and all interlineations blanks erasures and alterations which appear in the original shall be noted in the manner laid down in rule 213. All such entries must be authenticated by the registering officer daily.

Certificate of registration.

265. The certificate of registration required by section 60 shall be endorsed on the the document registered according to form L of the 315 and shall be signed by the registering officer and sealed with the seal of his office. It shall contain the serial number of the entry and the book volume and page where in the document has been registered as well as the date of registration which it may be explained is the date on which the instrument is copied into the register and not the date on which it was presented for registration.

Extracts from the Registration Manual.

PUNJAB.

Procedure on Acceptance.

Rules, Punjab

Payment of fees on acceptance

125. When a document is accepted for registration, each party shall be informed of the amount of fees he has to pay and, as soon as such fees are paid, the receipt prescribed in section 52 of the Act shall be given to him At the same time he shall be informed at about what hour the document will be returned to him if it can be returned the same day, and the hour in question shall be written on the receipt If the document cannot be returned the same day he shall be told on what date and at what time he should appear to claim it, and the date and time aforesaid shall be end orsed on the receipt but in offices where the system of return of documents by post is in force (paragraph 149), he shall be given the option of having the document returned by post or of appearing in person to claim it the procedure necessary being clearly explained to him If in payment of the fees any party pays more than the exact amount due, the excess shall be returned to him at once The endorsement required by section 52 of the Act shall then be recorded and shall be signed by the registering officer and the presenter

Enquiry as to execution identity etc

126 The registering officer shall then with as little delay as possible, enquire whether the document was executed by the alleged executant, and satisfy himself as to the identity of the person appearing before him to admit execution In cases of alienation, he shall satisfy himself of the identity not only of the alienor, but also of the alienee, if the latter is present If the presenter is the executant or his representative assign or agent, or if such executant representative, assign or agent is present, the registering officer shall make the necessary enquiry at once He should also require the presenter, if an agent, to produce a power of attorney authenticated in the manner prescribed in section 33 of the Act and, if a representative or assign to produce evidence of his status

Identification of parties

127. When the registering officer is not personally acquainted with executants, he shall require them to produce persons to testify to their identity who are personally known to him or to some other person whom he personally knows or of whose identity and reliability he is otherwise fully satisfied Stamp vendors and petition writers should never be allowed to identify executants whose deeds they have written, and in any case as a rule the registering officer should not accept persons of this class as witnesses of identity, nor should they have recourse to their own peons for this purpose Preference should be given

where possible to witnesses living in the executant's neighbourhood and of his class of life. An interested party to a deed should not be allowed to identify the executants of the deed. **Rules, Punjab**

128. Every deed shall be subjected to a thorough scrutiny with a view to ascertaining whether it correctly represents the intentions of the parties and the registering officer shall make sure that the person incurring liability knows the extent to which his rights are affected, as for instance in regard to his share in the *shamilat* or as to the question of cultivating possession. Documents executed by persons who are unable to read shall be read out and if necessary explained to them and the registering officer shall ascertain that they clearly understand their purport. Documents written in a language which the executants do not understand shall in like manner be interpreted and explained.

Documents to be scrutinised and explained to executants

129. If execution by the alleged executant is admitted and the registering officer is satisfied on the point of identity, he shall record on the instrument the endorsement *required by section 58 of the Act and such* endorsement shall be signed by the registering officer the executant and all the witnesses examined but no such endorsement is necessary on a copy of a decree or order or of a certificate sent under section 89 of the Act.

Recording of endorsement under section 58

137. Orders refusing to register should be made only after due care and consideration and if the impediment to registration is a mere informality or defect capable of remedy, opportunity should always be given to the parties to correct the flaw. In such cases registration shall be deferred, and no final order of refusal shall be made until the document concerned becomes time barred.

Refusal to register to be made with caution

138. If any person admits the execution of a document presented for registration but denies the receipt in whole or part, of the consideration recited therein, registration shall not be refused because of such denial, but a note of the denial shall be made in the endorsement required by section 58.

Denial of receipts of consideration

140. (1) When under section 35 of the Act, registration is admitted as to some of the parties to a document, but is refused as to the rest, the registering officer shall endorse thereon an order in this form —"Registration *refused as to A B and C D" and shall record the* reasons for this partial refusal in his book 2, but in all other respects he shall proceed with the registration of the document in the ordinary manner.

When registration is admitted *qua* some but refused *qua* other parties

Rules, Punjab

(2) If a document of which registration was refused *qua* some of the executants is subsequently registered against them under an order of the Registrar or a decree of a civil court it is not necessary to recopy the deed in the registration book concerned, but the new endorsement and certificate recorded on the deed should be copied under the certificate previously copied in the book or if there is not sufficient blank space in the book for that purpose the new endorsement and certificate should be copied in column 1 of the book under the last deed copied therein on the date of the registration In the latter case the number of the page and volume of the book where the copy of the deed will be found should be noted in column 3 against the new endorsement and certificate

Certificates of registration

146. After the document has been copied the certificate required by section 60 of the Act shall be endorsed on it It shall be signed by the registering officer and sealed with the seal of his office This certificate shall contain the serial number of the entry, and the book, volume and page, wherein the document has been registered, as well as the date of registration, which is the date on which *the instrument is copied into the register, and not the date on which it was* presented for registration The endorsement shall then be copied into the register as required by section 61 of the Act

Appeals to the Registrar.

Procedure on appeal

162. (1) When application is made to a Registrar to reverse the order of a Sub-Registrar refusing to admit a document to registration, the Registrar should examine it so as to see, first, whether it was made within time (*i e*, 30 days after the date of the order) and, secondly, whether it was of the nature of an appeal under section 72 or of an application under section 73 of the Act

(2) If the application is brought within time, and is of the nature of an appeal under section 72 of the Act, the Registrar shall pass such order thereon as seems to him proper under the circumstances If it is made within time, and is of the nature of an application under section 73 of the Act (*i e* an application to establish a right to have a document registered which the Sub Registrar has refused to register on account of *denial of execution) the Registrar must make the enquiries prescribed in section 74* of the Act, and pass an order accordingly This is an obligation imposed upon him by law, which he is not at liberty to evade by referring the applicant to a civil court

(3) When the Registrar, after enquiry, directs registration of the document, he should inform the Sub Registrar concerned thereof The order directing registration should be endorsed on the document, thus "Registration ordered," and the document should then be handed back to the applicant with a view to his presenting it for registration at the proper office within the time allowed by law

Rules made under Section 69 of the Act.

BIHAR AND ORISSA.

PART III.

Languages to be deemed to be commonly used in different districts.

Rules, Bihar & Orissa

10. The following languages shall be deemed for the purpose of section 19 to be commonly used in the districts respectively mentioned opposite thereto.

Languages	Districts
English, Hindi and Hindustani (Urdu)	Districts of the Patna and Tirhut Divisions and the districts of Bhagalpur and Monghyr
English, Hindi, Hindustani (Urdu) and Bengali	Districts of the Chota Nagpur Division and the districts of Santal Parganas and Purnea
English, Oriya, Bengali and Hindustani (Urdu)	Districts of the Orissa Division

PART IV.

Territorial Divisions.

Territorial Divisions

11. The territorial divisions to be recognized under sec. 21, sub-sec. (3), shall be —

(*a*) registration districts, sub-districts and thanas,

(*b*) parganas and mauzas, where they exist, and

(*c*) collectorate districts, if these are different from registration districts.

PART XI.

Procedure on acceptance of Documents for Registration.

Endorsement of certificate of admissibility

42. If the requirements of the law have been complied with in respect of all the particulars indicated in rule 34, a certificate of admissibility in Form No. 1 in Appendix IV, shall be endorsed on the face of the document, and shall be signed and dated by the registering officer.

Documents on more than one sheet of paper

43. When a document occupies more than one sheet of paper, the seal and signature of the registering officer shall be attached to every sheet at the time of presentation.

Receipt of fee and fine

44. (1) After endorsing on a document the certificate of admissibility referred to in rule 42, the registering officer shall receive the registration fee and the fine (if any) payable under section 25, sub section (1) and shall enter the respective amounts thereof on the document close to the said certificate, and at the same time the requisite entry shall be made in the fee book

(2) The amounts of the fee and fine (if any) paid shall be respectively endorsed on the receipt given under sec 52, clause (b), in Form No 13 in Appendix I

Endorsements how to be made

45. (1) The endorsements required by secs 52 and 58 shall be written in Forms Nos II and III in Appendix IV, respectively

(2) All endorsements whether made under sec 52, or sec 58 or otherwise shall be made in red ink, except that signatures thereto shall be made in black ink

(3) Every endorsement made by a registering officer shall be written in his own handwriting but rubber stamps may be used for the formal parts of the endorsements under secs 52 and 60 and of the certificate of admissibility

Identification of executants

46. (1) When the registering officer is not personally acquainted with the executants of a document presented for registration, he shall require them to furnish the best testimony obtainable to establish their identity

Illustration —Respectable persons known to the registering officer, or co villagers of the executants of apparent respectability, are suitable persons to identify executants

(2) The registering officer shall satisfy himself that the identifier is really acquainted with the person or persons whom he proposes to identify, and the identifier shall be asked to state the name of the person to be identified and also whether such person is really the person he professes to be

Signature of illiterate person

47. When a person, who cannot write, signs his name by means of a mark or by touching the pen his name shall be recorded at length and the writer of the name shall also sign and date his own signature in attestation that the mark was affixed or the pen touched in his presence

Postponement of refusal to register

48. Before refusing under section 35, to register any document, the registering officer may, at the request of the parties, postpone action in order to enable them to comply with the requirements of the law, but no such postponement shall exceed the period prescribed by sec 34

Rules, Bihar & Orissa

Refusal of registration when some representatives of deceased executant deny execution

49. Where some of the representatives of a deceased executant deny execution while others admit it, registration of the document shall be altogether refused subject to the provisions of sec 73 of the Registration Act

Procedure on failure of the executant to appear within four months from execution of document

50. (1) Where a document has been presented to a Sub Registrar for registration within the period prescribed by sec 23, namely, within four months from the date of execution and the executant fails to appear to admit execution within that period, the Sub Registrar shall immediately after the expiration of the said period, record a formal refusal to register leaving it to the parties to appeal to the Registrar under sec 72 within thirty days if they think proper

Provided that the Sub Registrar shall not record such an order if the person presenting the document has, before the expiration of the said period, initiated proceedings under sec 36 to procure the appearance of the executant, but in that case he shall report the matter to the Registrar for orders at the end of the said period

(2) In the case of an appeal under sec 72 mentioned in sub rule (1), the Registrar shall not pass an order directing the Sub Registrar to register the document, unless it is shown on the appearance of the executant before the Registrar, that his non appearance before the Sub Registrar, within the period prescribed by sec 23, was due to urgent necessity or unavoidable accident If the Registrar passes such an order, a fine shall be imposed as provided in the proviso to sec 34 sub sec (1)

(3) In the case referred to in the proviso to sub rule (1) —

(*a*) The Registrar shall, on receipt of the Sub Registrar s report, direct the document to be kept pending the disposal of the proceedings initiated under sec 36, but not for a period exceeding eight months from the date of execution

(*b*) If the executant appears on the service of the summons and admits execution, his admission shall be recorded and he shall be called upon to submit an application to the Registrar, for a direction under the proviso to sub section (1) of sec 34 of the Act, explaining the cause of the delay in his appearance When such an application is received, the Sub Registrar shall forward it to the Registrar with any remarks he may wish to make and await orders

(*c*) The Registrar shall consider the cause shown for the delay in appearance of the executant and may pass an order directing the Sub Registrar to register the document on payment of a fine as provided in sec 34, sub sec (1)

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(*d*) If the Registrar is unable to accept the cause shown for the delay, he shall direct the Sub Registrar to refuse to register the document

(*e*) If the executant refuses or is unable to show cause for the delay, the Sub Registrar shall also report the case to the Registrar for orders

(*f*) The Registrar shall in such cases direct the Sub Registrar to refuse to register the document

(*g*) The Sub Registrar, on receipt of the Registrar s order, under paragraphs (d) and (f), shall record an order of refusal under sec 34 for non appearance of the executant within the period of four months from the date of execution

Procedure on failure of the executant to appear after *payment of fine under sec* 25 within eight months from execution of documents

51. (1) If the time for accepting a document for registration has been extended under sec 25, and the executant fails to appear to admit execution within the period of *eight months from the date of its execution, the* Sub Registrar shall immediately after the expiration of the said period record a formal refusal to register, leaving it to the parties to appeal to the Registrar under sec 72 within thirty days, if they think proper

Provided that the Sub Registrar shall not record such an order if the person presenting the document has, before the expiration of the said period, initiated proceedings under sec 36 to procure the appearance of the executant, but in that case he shall report the matter for the orders of the Registrar on the expiration of the said period

(2) In the case of an appeal under sec 72, mentioned in sub rule (1), the Registrar shall not pass an order directing the Sub Registrar to register the document, unless it is shown, on the appearance of the executant before the Registrar, that his non appearance before the Sub Registrar, within the period extended under sec 25 was due to urgent necessity or unavoidable accident If the Registrar passes such an order, a fine shall be imposed as provided in the proviso to sec 34, sub sec (1), in addition to the fine already imposed under sec 25, sub sec (1)

(3) In the case referred to in the proviso to sub rule (1) —

(*a*) The Registrar shall, on receipt of the Sub Registrar s report, direct the document to be kept pending the disposal of the proceedings initiated under sec 36, but not for a period exceeding twelve months from the date of execution

(*b*) If the executant appears on the service of the summons and admits execution, his admission shall be recorded and he shall be called upon to submit an application to the Registrar for a

direction under the proviso to sub sec (1) of sec 34 of the Act explaining the cause of the delay in his appearance When such an application is received the Sub Registrar shall forward it to the Registrar with any remarks he may wish to make and await orders

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(c) The Registrar, after considering the cause shown for the delay in appearance of the executant, may pass an order directing the Sub Registrar to register the document on payment of a fine as provided in sec 34, sub sec (1) in addition to the fine already imposed under sec 25 sub sec (1)

(d) If the Registrar is unable to accept the cause shown for the delay, he shall direct the Sub Registrar to refuse to register the document

(e) If the executant refuses or is unable to show cause for the delay, the Sub Registrar shall also report the case to the Registrar for orders

(f) The Registrar shall in such cases direct the Sub Registrar to refuse to register the document

(g) The Sub Registrar, on receipt of the Registrar's order under paragraphs (d) and (f) shall record an order of refusal under sec 34 for non appearance of the executant within the period of eight months from the date of execution

Wilful refusal or neglect to attend and admit execution

52. A registering officer shall record his refusal to register the document under sec 35 as soon as he is satisfied that the summons has been served according to law and the executant has refused or neglected to appear on the appointed date

Application of rule 50 to documents executed out of British India

53. (1) The procedure prescribed by rule 50 shall apply also in the case of document referred to in sec 26, with this exception only, that the period of four months referred to in that rule, and any extended period allowed under the proviso to sub sec (1) of sec 34, must be reckoned from the date of the arrival of such documents in British India and not from the date of their execution

(2) Such document shall not under any circumstances, be accepted *for registration more than eight months from the date of their arrival in* British India

Who is to register when Registrar decides that a document should be registered more than four months after its execution

54. (1) When a document is presented for registration, or the execution thereof is admitted, more than four months after execution and the Registrar decides that the document should be admitted to registration, he may either—

(a) register the document himself, in which case the extra fee prescribed in Article I of the Table of Fees, as well as the penalty imposed under sec 25 or the proviso to sub sec (1) of sec 34, as the case may be, shall be levied, or

(b) direct the registration of the document, on payment of the said penalty, by any Sub Registrar in whose office it could have been registered if presented within the said period of four months

(2) In such cases the date on which the application was made to the Registrar for his decision shall be regarded as the date of presentation

Records of reasons for refusal to register

55. (1) When a registering officer records under sec 71, or sec 76, his reasons for refusing to register a document in Book No 2 he shall make the record with his own hand and shall state the reasons fully and clearly

(2) If the reasons include the fact that one or more out of several executants declines or decline to comply with the requirements of the law, his name or their names shall be given and if the registering officer is doubtful as to the identity, saneness or intellect of a party admitting execution, the grounds of his doubts shall be stated

(3) When registration of a document is refused a notice communicating the order of refusal shall be forthwith issued by post to the presentant of the deed.

PART XIV.

Special Provisions as to Powers-of-Attorney.

Recognition and authentication of Powers-of Attorney

78. (1) A power of attorney shall not be recognized as authorizing an agent to act on behalf of a principal under the Act, unless it contains an express or implied authority in that behalf

(2) Powers of attorney which do not contain or imply an authority to appear in a registration office to present document for registration (sec 32) on behalf of the principal or to admit the execution of documents (sec 34) executed by the principal shall not be authenticated under sec 33, clause (a)

Note to be made of interlineations etc

79. (1) All interlineations blanks, erasures and alterations in powers of attorney authenticated by a registering officer under sec 33 clause (a), shall at the time of such authentication, be detailed in a foot note signed by the registering officer

(2) When there are no interlineations, blanks, erasures or alterations in such a power of attorney, the fact shall be mentioned in a foot note signed by the registering officer

(3) The said foot note shall be copied in every case into the register of powers of attorney kept in Form No 18 in Appendix I

Authentication of Powers of Attorney

80. The authentication of powers of attorney shall be made—

(i) in Form No IX (a) in Appendix IV, when the principal executing the power appears at the registration office,

(ii) in Form No IX (b) in Appendix IV, when the principal being exempted from appearance, the registering officer examines the principal on a visit under sec 33 sub-sec (3) and

(iii) in Form No VIII (b) in Appendix IV, when the principal is examined on commission

Endorsement when a special Power-of-Attorney is used

81. (1) Whenever a special power of attorney is used in registration offices for the purposes of section 32 or section 34 an endorsement shall be made upon it, in Form No X in Appendix IV, and it shall be returned forthwith to the party by whom it was presented

(2) In the case of general powers of attorney no such endorsement is required and they shall be returned, after inspection, to the parties by whom they were presented

Translation of Power-of-Attorney to be filed in certain cases

82. The presentant of a power of attorney which is presented for attestation or of an attested power of attorney produced by him as agent with, or in connection with a document presented for registration, shall, if the power of attorney is written or authenticated or both written and authenticated in a language not commonly used in the district, be required to file a translation in English of the power of attorney or the endorsement of authentication or of the power of attorney with the endorsement of authentication, as the case may be, such translation being certified to be a true translation and attested by the presentant

PART XV.

Procedure with regard to Wills.

Deposit of wills

83. (1) A will shall not be received for deposit otherwise than is prescribed by section 42, and any will received through the post office shall be returned to the sender in an unstamped envelop

(2) The headings in Form No 13 in Appendix I shall as far as practicable, be filled up in the receipt granted under section 52, clause (b), for any will deposited under section 42, and a note shall be entered on the receipt stating that the will is received for deposit under section 42

(3) The Registrar shall explain to every person depositing a will that no steps will be taken by the Government to ascertain the date of the testator's death or to communicate with the beneficiaries after his death, and a note to that effect shall be made on the receipt above referred to

Rules, Bihar & Orissa

Entries in Register book No 5

84 Every entry made in Register book No 5 under the provisions of section 43 shall be signed in full, and dated by the Registrar

Entries in Book No 5 shall be made and the alphabetical index prescribed by rule 29 (1) shall be prepared by the registering officer himself who receives the cover for deposit

Withdrawal of sealed cover containing will

85. When a sealed cover containing a will is withdrawn under section 44, the fact shall be noted in Register book No 5 and the entry shall be signed by the person by whom the cover is withdrawn, as well as by the Registrar, and the receipt referred to in rule 83 (2) shall be returned by such person and filed in the Registrar's office

Opening of sealed cover containing will

86. (1) When a sealed cover containing a will is opened under section 45, the fact shall be noted in Register book No 5 and the note shall be signed and dated by the Registrar

(2) If a cover is opened under an order of a Civil Court the fact shall be mentioned in the said note

Documents to accompany wills forwarded to a Court

87. When a will is forwarded to any Court under section 16 it shall be accompanied by—

(a) a memorandum of the fee for opening the cover and the charges (if any) for copying the will into Register book No 3, and

(b) a letter requesting such Court to levy such fee and charges and to remit them to the Registrar by whom the will is forwarded

Monthly examination of sealed covers containing wills

88. Sealed covers containing wills deposited with a Registrar under section 42 shall be examined monthly and their condition on such examination shall be noted in such manner as the Inspector General of Registration may direct

Revocation of will and authority to adopt to be registered in Book No 3

89. A revocation or cancellation of a will or an authority to adopt shall be registered in Book No 3, fee being charged under Article C of the Table of Fees

Wills registered or refused shall not be destroyed but forwarded to Sadar office for safe custody

90. Wills registered or refused registration in a Sub Registry office which remain unclaimed for a period exceeding two years, shall be forwarded to the Registrar's office for safe custody, a note to that effect being entered against the original entry in the fee book All documents so transferred shall be entered in the register (Form No 4 in Appendix I) prescribed by rule 101

Rules made under Section 69 of the Act.

BURMA.

CHAPTER X.—GENERALLY REGULATING THE PROCEEDINGS OF REGISTRARS AND SUB-REGISTRARS

PRESENTATION

43. On the presentation of a document for registration, the registering officer shall satisfy himself — **Rules, Burma**

(i) that it has been presented at the proper office (sections 28 29 and 30)

(ii) that it bears the proper stamp whether as an original counter part or duplicate or that it is exempt from stamp duty

(iii) that it is in one of the languages commonly used in the district or if not that it is accompanied by a translation and a true copy (section 62)

(iv) that in the case of interlineations section 20 has been complied with

(v) that if the document refers to immoveable property the description is sufficient (section 21)

(vi) that it has been presented within the proper time (sections 23, 24 and 26)

(vii) that it has been presented by a person authorized to do so (section 32)

44. Copies and translations of documents required to be filed under section 62 shall be made upon good foolscap paper, and shall be numbered in consecutive order With each year a new series shall begin The serial number of each copy and translation shall be entered on the right hand margin of the page on which the translation is copied in the register books In Registrar s offices the file shall be bound from time to time when it contains a sufficient number of copies and translations to form a volume

45. In every case in which a registering officer shall find it necessary to satisfy himself of the date on which a document of the kind referred to in section 26 arrived in British India he shall make a note upon the document of the manner in which he satisfies himself on the point, and shall enter a copy of such note in the right hand margin of the page of the register book on which the document is registered

Rules, Burma

46. If the requirements of the law have been complied with in all the above particulars, a certificate quoting the sections under which the document is admitted to registration shall be entered on the face of the deed according to one or other of the forms given in Appendix XI

47. After entry of the certificate under Rule 46, the registering officer shall receive the fee or fees and any fine payable under section 25 or 34 and shall enter the total amount on the document close to such certificate in the following form, namely, "*Fees received Rs* "

48. The amount of the fee or fees paid shall be entered in detail on the receipt for the document given under section 52

49. The endorsements prescribed by sections 52 and 58 shall then be written in one or other of the forms given in Appendices XII and XIII These forms shall be strictly observed, except as provided in Rule 55 and in sections 72 75 and 77

50. The certificate of admissibility and the abovementioned endorsements shall always be written in the presence of the executants of documents, or of the parties authorized to admit execution of them Endorsements shall be written in English or in Burmese as the Registrar or, subject to the sanction of the Registrar, the Sub Registrar for the time being may decide

51. When any person required by the provisions of the Indian Registration Act, 1908, or of the Rules thereunder to sign his name is —

(i) unable to write, or

(ii) not personally known to the registering officer such person shall—

(i) in lieu of, or (ii) in addition to, signing his name imprint the mark of his left thumb (or of his right thumb if he has no left thumb) on the document to be registered and also in the register styled BOOK 7, which shall be in the form given in Appendix No XIIIA

Such thumb impression shall be made in the manner prescribed for taking thumb impressions of Government servants and pensioners and in the presence of the registering officer In the case of a person who is unable to write, the registering officer shall write, or cause to be written, the full name of such person against his thumb impression and shall also attest such impression with his signature

The serial number of each impression taken from the register Book 7 shall be entered against each such impression in the original endorsement and in lieu of the impression in the copy of the endorsements made in the register book

52. All endorsements shall be made in red ink excepting signatures, which shall be written in black ink

53. When there is not room in a document for the necessary endorsements, they may be made on a separate sheet of strong foolscap paper, which shall be supplied by Government and attached to the document, a note being at the same time made on the document itself and signed by the registering officer Every piece of paper so added shall bear the seal of the registering officer and shall be signed and dated by him

54. If the document occupies more than one sheet, the registering officer shall sign the first page of each sheet and over his signature shall record the words '*for endorsements see page* The page or pages shall be numbered and initialled by the registering officer

55. When a document executed on behalf of Government is not presented by an agent of Government and the registering officer proceeds under section 88, he shall vary the endorsements of presentation and admission of execution (Appendices XII and XIII)

56. After the prescribed endorsements have been entered on the document the amount of fees received shall be entered in the fee book in detail

57. A *receipt* for the document and for the fees paid shall then be delivered in the form given as Appendix XIV to the person by whom the document was presented

If the document is to be returned by post after registration as described in Rule 60, the receipt must first be modified as described in Rule 61

58. When the registration of a document is completed if arrangements have not been made for the return of the document by post under Rule 60 the receipt shall be surrendered to the registering officer, who shall return the document to the person by whom it was presented, or to such other person if any, as he has nominated in writing in that behalf in manner provided by section 61 The receipt shall then be pasted to the counterfoil to which it appertains If the person to whom the receipt was given alleges his inability to produce it in consequence of its destruction or loss, the registering officer shall record a statement to that effect on the counterfoil of the receipt and shall, if satisfied of the identity of the person claiming the document return it to him after obtaining his signature on the counterfoil as an acknowledgment of receipt

59. When a document presented for registration has been executed under a power of attorney, the power shall be returned to the agent after the necessary particulars have been noted in the endorsement on the document presented for registration

Rules, Burma

WILLS.

99. A Will shall not be received for deposit otherwise than in the manner laid down in section 42 A Will received through the Post Office shall be returned to the testator by letter post unpaid.

100 When a Will is deposited under section 42, the Registrar shall inform the person by whom it is deposited that no steps will be taken by Government to ascertain when the testator dies and to communicate after his death with the beneficiaries under the Will Unless the Will is withdrawn under section 44, or is required to be produced before a Court under section 46, it will remain unopened until an application is made to the Registrar in accordance with section 45.

101. Every entry made in *Book* 5 under the provisions of section 43 shall be signed in full and dated by the Registrar

102. When a sealed cover is withdrawn under section 44, the fact shall be noted in register book 5 and the entry shall be signed by the person by whom the withdrawal is made as well as by the Registrar

103. When a sealed cover is opened under section 45, the fact shall be noted in register book 5 and the entry shall be signed by the Registrar If the cover is opened under the order of a Civil Court the fact shall be mentioned in the entry

104 When a Will is forwarded to any Court under section 46 it shall be accompanied by a memorandum of the fee for opening the cover and of the copying charges and the Registrar shall request the Court to levy such fee and charges and to remit the same to him

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